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RM 88-3

TECHNOLOGICAL ALTERATIONS TO MOTION PICTURES

APPENDIX I
PUBLIC COMMENTS

MARCH 1989

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A REPORT OF
THE REGISTER OF COPYRIGHTS

COMPLETED

INDEX

RM 88-3

Comment Letter	From	Page
No. 1	Society for Cinema Studies (John Belton)	1
No. 2	Max Planck Institute for Foreign and International Patent, Copyright, and Competition Law (Thomas Dreier, Silke von Lewinski)	27
No. 3	Color Systems Technology, Inc. (Joseph A. Adelman)	43
No. 4	Turner Broadcasting System, Inc. (Bertram W. Carp, Nell Payne)	69
No. 5	Motion Picture Association of America, Inc. (Peter Nolan, J. Nicholas Counter III)	117
No. 6	Quitex Entertainment, Inc. (Rob Word)	148
No. 7	Peter Jaszi (Peter Jaszi)	154
No. 8	Directors Guild of America (Arnold Lutzker, Woody Allen, Sidney Pollack, Milos Foreman, Elliot Silverstein, Ginger Rogers, James Stewart, Sydney Pollack, DGA, Frank Pierson, George Lucas, Steven Spielberg, Bo Goldman, Arthur Hiller)	160
No. 8a	Directors and Film Preservation (Directors Guild of America)	376
No. 9	American Movie Classics (Joshua Sapan)	408

Comment	From	Page
No. 10	Erol's Video Club & Color TV (Vans Stevenson)	442
No. 11	Video Treasures, Inc. (George Port)	451
No. 12	Donald L. Pevsner (Donald L. Pevsner)	453
No. 13	International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators (Alfred W. Di Tolla)	480
No. 14	George Stevens, Jr. (George Stevens, Jr.)	483
No. 15	National Broadcasting Co., Inc. (NBC) (Corydon B. Dunham, W. Drew Kastner, Howard Monderer, Molly Parker)	493
No. 16	National Association of Broadcasters (Henry L. Baumann, S. Keith Townsend)	549
No. 17	Morality in Media, Inc. (Robert Peters)	567
No. 18	American Film Technologies, Inc. (Bernard Weitzman)	569
No. 19	Filmlife, Inc. (Marvin A. Bernard)	577
No. 20	National Center for Film and Video Preservation of the American Film Institute (Gregory Lukow)	582

ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

REQUEST FOR INFORMATION; NOTICE OF HEARING

REQUEST FOR INFORMATION; NOTICE OF HEARING,
NEW TECHNOLOGY AND AUDIOVISUAL WORKS.

The following excerpt is taken from Volume 53, Number 101 of
the Federal Register for Wednesday, May 25, 1988 (pp.18937-18938)

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 88-3]

Request for Information; Notice of Hearing, New Technology and Audiovisual Works

AGENCY: Library of Congress, Copyright Office.

ACTION: Request for information; notice of hearing, new technology and audiovisual works.

SUMMARY: The Copyright Office of the Library of Congress issues this request for information to advise the public that it is inquiring and intends to hold a public hearing on issues concerning how new technologies such as colorization, time compression, and panning-and-scanning affect the creation and uses of audiovisual works, including motion pictures and television programming. This notice invites participation in a public hearing intended to elicit comments, views, and information that will assist the Office in understanding the extent of the present use of these new technologies in conjunction with audiovisual works, the problems, if any, that this technology may create for both the integrity of our national film heritage and the creative freedom of filmmakers, as well as the extent such technologies are expected to be used in the future and their impact on consumers, artists, producers, distributors, and other affected individuals and industries. Written comments are also solicited.

The Office particularly invites comment from or participation by representatives of organizations of individuals involved in creating audiovisual works; with distributors, broadcasters and other commercial interests that exploit such works or own copyright interests in them; with consumers, institutional film collectors, archivists, academics, libraries, and government agencies.

DATE: The hearing will be held on September 8, 1988 in Washington, DC. Anyone desiring to testify should contact the Office of the Register of Copyrights at (202) 287-8350 by August 24, 1988. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on August 17, 1988, if possible, and in any case no later than August 24, 1988. Written comments are also invited from persons who do not wish to testify, and should be submitted by September 22, 1988.

ADDRESSES: The hearing will be held on September 8, 1988 in the Mumford Room of the James Madison Memorial Building (LM-649), Sixth Floor, Library of Congress, First and Independence Avenue., SE., Washington, DC, beginning at 9:30 a.m.

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20559.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: William Patry or Eric Schwartz, Policy Planning Advisors to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8350.

SUPPLEMENTARY INFORMATION: At the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, the Copyright Office is conducting an inquiry and preparing a report on the effect new technologies such as colorization, time compression, and panning-and-scanning have on the creation and exploitation of audiovisual works, including motion pictures and television programming.

On June 22, 1987 the Copyright Office issued a Notice of Registration Decision regarding claims to copyright in certain computer-colorized versions of black and white motion pictures. 52 FR 23443-23446. The Notice informed the public that, after having received and reviewed 46 comments about the nature of claimed authorship in and the process of creating computer-colorized versions of black and white motion pictures, the Office had concluded that some computer-colorized films may contain sufficient authorship to justify registration. The standard to be applied in determining whether the color added to a black and white motion picture satisfies the originality standard for protection is that which already applies to all other derivative works: i.e., modifications "which, as a whole, represent an original work of authorship." 17 U.S.C. 101 (definition of "derivative work"). The notice then enumerated five criteria the Office

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would apply in determining whether the coloring of a particular black and white film is a modification that satisfies this statutory standard. The Notice of Registration Decision noted that registration determinations cannot be made on aesthetic grounds and, accordingly, that aesthetic or moral arguments about the propriety of coloring black and white films did not form any part of the inquiry.

On June 24, 1987, the Office published a separate notice of proposed rulemaking regarding the deposit requirements for colorized versions of black and white motion pictures. 119 FR 23691-23692.

This notice does not seek additional comments regarding the registrability of computer-colorized versions of black-and-white audiovisual works. Instead, it seeks information concerning the nature, extent, and effect of these new technologies on creators, distributors, and the public.

Specifically, the Office seeks comments in the following areas:

1. Nature and Impact of the Technology

The Office would appreciate information regarding:

a. Description of the technologies of colorization, time compression, and panning-and-scanning and how and why these techniques are utilized after the creation of an audiovisual work.

b. What considerations are taken into account in deciding whether to use these technologies—commercial, aesthetic, or other factors? How does the use of these technologies affect the integrity of and economic rewards flowing to those involved in the creation of the original work (including but not limited to the director, producer, actors, cinematographers, screenplay authors, soundtrack composers, and set designers)? Have these individuals objected to the use of these technologies, and, if so, how have the objections been resolved?

c. What is the present extent of the use of the technologies and what is the present impact of the technologies on those involved in the distribution of the original and the altered versions of the work? What is the projected future use and impact of these technologies? Are there similar technologies currently in the planning or development stages, and, if so, what is their projected use and impact?

d. What is the impact of the new technologies on public access to audiovisual works? Do they increase or decrease demand for or availability of the original? Do the new technologies have different impact depending upon the medium of distribution; e.g., theatrical distribution, home videocassette sale or rental, and cable or other pay TV mechanisms?

2. Contractual Practices

Do existing contractual or collective bargaining agreements govern the nature and extent of the use of the new technologies, and if not, why not? Are there differences in contract provisions negotiated by established creators and those negotiated by lesser-known artists?

3. Foreign Practices

Have foreign countries addressed any of the issues raised by these new technologies, and if so, how, and are these foreign practices relevant or applicable to practices in the United States?

4. Possible Future Legislative Action

Is there a need for additional legislation to solve the problems caused by the new technologies or should the private contractual or collective bargaining process be relied upon? Would additional legislation upset existing contractual relationships or raise constitutional issues with respect to restrictions on the exploitation of existing rights? If legislation is believed to be necessary and appropriate, what form should it take—federal (e.g., amendments to the Copyright Act or the Lanham Act) or state (e.g., state moral rights statutes) and who should be protected—only the principal director or screenwriter of the original work, or all others involved in the creative process, e.g., the actors, the cinematographers, the screenplay authors, the soundtrack composers, and the set designers? Is it possible or desirable to distinguish between works which should be protected? Should protection be limited to recognized classics, and, if so, how should it be determined if a work is a classic or otherwise deserving of protection?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, in Room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SE., Washington DC 20559.

Dated: May 13, 1988.
Approved:

James H. Billington,
The Librarian of Congress.

[FR Doc. 88-11705 Filed 5-24-88; 8:45 am]
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New Technology

Comment Letter
RM 88-3
No. 1

My name is John Belton, and I am speaking today on behalf of the Society for Cinema Studies, which is a professional organization of over 650 film and television scholars, educators, and students who are engaged in the study of the moving image.[1] I currently serve as Chair of that organization's Task Force on Film Integrity.

We have asked the Copyright Office for permission to present, on behalf of the academic community, a statement outlining our views on the effects of new technologies upon motion pictures and television programs. We are particularly anxious to convey our concern over the ways in which certain new technologies threaten the integrity of original creative works through a material alteration of them.

At the outset, however, we wish to make it clear that we do not oppose the development of new motion picture and television technologies. The future of of the motion picture and television industries, like that of American industry in general, depends upon technological innovation. The motion picture is a product of technological innovation. Indeed, the year 1989 will witness the 100th anniversay of the development of 35mm motion picture film, which is the basis of the film industry and its most enduring technological standard. As a product of technology, film has developed an aesthetics that remains, in large part, integrally related to its technological base. Silent cinema, for

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example, developed a system of representation that enabled it to convey a wide and complex range of stories, characters, themes, and ideas to its audience. The sound film, in turn, established its own mode of expression, as did the color film and the widescreen film. Today, the black and white sound film, the color film, and the widescreen film have become unique systems of representation, each possessing its own, somewhat different means of expression. The aesthetic power of a film clearly depends upon the way in which it transforms the raw material which constitutes it technological base--sound, black and white or color images, screen dimensions--into specific images and sounds. Once such a transformation has occurred and a film has been made, the integrity of that original film will depend, in large part, upon respecting its original aesthetic and technological components. Thus the colorization of a film that was originally shot in black and white, the panning and scanning of a film that was originally filmed in widescreen, or the lexiconning (that is, the time compression and/or expansion) of a film that was shot at the standard rate of 24 frames per second will violate its integrity.[2]

The central character of George Orwell's 1984 is a technological bureaucrat who sits at a desk and punches information into computer. Following the specific orders of his superiors, he retrieves information from the past and alters it according to the latest party line of the totaliarian state government. As scholars involved in the transmission of film

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history to present and future generations of students, we regard the practices of colorization, panning and scanning, and lexiconning as tantamount to an Orwellian re-writing of film history. The existence of these "bogus" works makes our task all the more difficult. Before we can teach film history, we must first re-educate students who have grown up watching a distorted version of it on television.

In terms of this issue of film and its relation to technology, it is important to distinguish between original and derivative technologies. The industry relies upon "original" technologies to create the work; derivative technologies, such as colorization, panning and scanning, and lexiconning, either add to or subtract from that original work. They are not capable of being used to create original works themselves, but can only "feed off of" the original. It may be that one day scholars will find these derivative works worthy of study, much as Shakespeare scholars have probed the bowderlized verions of his plays for clues to the ways in which subsequent cultures consume earlier works, but these altered works will ultimately tell us more about the values of the culture that saw fit to change them than about the culture which created the originals.

I suspect that future scholars will view colorization, panning and scanning, and lexiconning as symptomatic of what Fredric Jameson refers to as postmodern consumer culture--a culture in which there is no authenticity or originality but only appropriation and quotation--a culture which consumes its past

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indiscriminately, seemingly incapable of respecting its integrity. At the center of this culture lies a television set, an object that has become symbolic of a certain kind of consumption and which has necessarily left its mark, as a medium, upon motion pictures. Though the Society for Cinema Studies encourages television and television studies and treats the medium with great respect, it also acknowledges that telveision and video pose certain problems to those concerned with film study. We view colorization, panning and scanning, and lexiconning as practices which have largely been determined by the needs of the growing television, cable, and videocassette industries for entertainment software. The standards and norms of the television/video medium have been imposed willy-nilly upon the quite different standards and norms of another--the motion picture industry. Thus, because all television programming (since the mid-1960s at least) is in color, all films shown on television must be in color, even though most of the films made before the 1950s were made in black and white and even though, until quite recently, a number of new films continued to be made in black and white. Because the dimensions of the television screen have an aspect ratio of 1.33:1, all films shown on television must have that same aspect ratio, even though virtually every film made since 1953-54 was filmed in one of several widescreen aspect ratios ranging from 1.66:1 to 2.66:1.[3] Because television programming traditionally involves fixed time-slots ranging from thirty minutes to two or three hours, films

must be adapted to fit into those time slots; as a result, they are cut, added to, and/or lexiconned.

Though technological change in the motion picture and television industries has always been determined, in part, by economic factors, future scholars will undoubtedly find that colorization, panning and scanning, and lexiconning are determined not in part but in their entirety by economic factors. The impetus for colorization comes from the advent of color television and the introduction of a two-tiered system in rental rates for motion pictures. Though black and white films continued to be shown on television in the 1960s, television broadcasters paid more for color than for black and white films. According to this system, a dubbed, color version of a Japanese monster picture would automatically provide its distributor with a higher rental than would Casablanca, It's a Wonderful Life, or (even) Night of the Living Dead. Though colorizers argue that "the people" insist on seeing films in color and refuse to watch films in black and white, the statistics which they provide in support of this could just as easily be attributed to other factors; the higher ratings for a colorized Night of the Living Dead over a black and white Psycho, an example often cited by colorizers to support their claims for the popularity of their process, cannot be ascribed to differences in genre--they are both horror films--but it may be attributed to the modernity of the film, Night of the Living Dead being the more recent film and, because of this accident of history, possessing a more

modern style and a more contemporary attitude to violence than does the less graphically violent Hitchcock film. At the same time, Psycho is less of a novelty, having been shown on television for many more years than Night of the Living Dead. Again, it is only recently that broadcast television would permit a film like Night of the Living Dead to be aired. Or the success of colorized films could be attributed to popular curiosity about the new process--that is, viewers watch not so much because the film is in black or white or in color but because it is somehow "new" or, in the case of colorization, something that is controversial.

The practice of panning and scanning (which, by the way, is an "old" technology, dating back to 1961-62) derives from the refusal of network television to show films with a black masking above and below the image. The use of masking would preserve the composition of the original widescreen film, but because it does so at the cost of diminishment of the overall size of the image, leaving the tv screen "unfilled," as it were, masking or letterboxing (as it is called today) was rejected in favor of a process whereby the widescreen image is successively recomposed by a camera which scans the width of the image, producing a tv-sized image possessing full height but missing the sides (which have been cropped off). Only directors and producers with enormous power in the film industry can insist that their films be shown on television or marketed on video in letterboxed versions. Thus Woody Allen insured that Manhattan would be seen

on tv in its proper, widescreen format, as did Steven Spielberg, whose The Color Purple and Inner Space (which he produced but did not direct) have been released on videocassette with masking above and below the image to preserve their original aspect ratio.

Lexiconning, as you know, is used to expand or compress the running time of a film or tv program in order to fit it into a longer or shorter time slot and/or to permit the inclusion of additional commercials without "cutting" the content of the program. Pennies From Heaven, for example, was time-compressed when it was shown on television in Los Angeles, as was Casablanca when it was shown on television in Miami. The classic Universal horror picture, The Black Cat, was similarly time-compressed for release on one side of a two-sided video disc. The length of Alfred Hitchcock's Rear Window, on the other hand, was increased, via time-expansion (during the credit sequences) and the addition of flashback sequences culled from footage that appears elsewhere in the film. (I learned about the alteration of Rear Window the last time that I taught the film. Students complained that the version I had shown was incomplete, lacking the flashbacks which they had seen when it was recently shown on television. After a bit of research, I discovered what had happened--that Universal had altered the original for television broadcast. This is precisely the sort of confusion that the alteration of original works introduces into the study and teaching of film history.) In each of these instances cited above, an original motion

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picture was materially altered in order to accommodate the temporal format of a different medium--television.

The derivative technologies of colorization, panning and scanning, and lexiconning are clearly not technical advances in the way that the advent of cound, color, and widescreen were. The latter technologies increased the aesthetic options for individual filmmakers, providing them with new technologies with which to work. In the case of panning and scanning and lexiconning, derivative technologies have clearly diminished the original. Panning and scanning, for example, crops the width of the original image by 50 per cent. Lexiconning can alter the speed at which a film is screened by as much as 10 per cent, compressing or expanding a two-hour film by as much as 12 minutes. And unlike colorization, which produces a visibly different work and which is marketed as such, panning and scanning and lexiconning are, for the average viewer, invisible alterations of the original. Unlike colorized films, they bear no credit acknowledging that they have been altered.

Though the Society for Cinema Studies opposes the material alteration of any film, we feel that if a film has been changed in any way for television or video distribution that the consumer is entitled to know that what they are seeing is not the original work but a derivative version of it. Panned and scanned films ought to bear a credit advising viewers that "This film has be recomposed for television and video." The names of the companies and of the technicians involved in the panning and scanning

process ought also to be listed. The same restrictions ought to be observed in the case of lexiconning. Colorized films ought to include a similar list of individuals involved in the colorization.

So far, we have addressed the impact of colorization, panning and scanning, and lexiconning upon works originally made for exhibition in motion picture theaters. In other words, we have looked at ways in which they have altered past works. In what follows we would like to consider the impact that these derivative technologies have had upon the present, that is, upon the production of motion pictures after these new technologies were introduced. Following this, we would like to project the effect of these new technologies upon future motion picture production.

Since panning and scanning has been with us longest--over 25 years--it might be instructive to begin with it and its impact upon filmmaking practice. During the late 1950s and early 1960s, the sale of relatively recent feature motion pictures to television became an economically crucial component of the distribution system. In 1961-2, the motion picture studios developed pan and scan systems so that they could sell their CinemasScope libraries to television. At around the same time, the American Society of Cinematographers issued a series of recommendations to its members, advising them to compose their widescreen images for television's "safe action area." Camera manufacturers began to produce viewfinders which indicate this

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area with a dotted line, and cinematographers began to protect their compositions for television by keeping essential narrative and/or aesthetic elements within this frame-within-a-frame. By keeping all crucial story information within the safe action area, cameramen adapted their art to satisfy the demands of the television screen and the needs of panning and scanning. The extreme widescreen compositions of the 1950s which exploited the full width of the frame and often placed figures at either edge of it gave way to conservative compositions characterized by "dead" space on either side of the central area of interest in the frame. Indeed, cinematographer Nestor Almendros openly acknowledges that today cameramen generally avoid compositions that exploit the extreme edges of the frame. And oldtime CinemaScope ace Joseph Biroc, who shot Sam Fuller's China Gate and Forty Guns, complains that, because of the double standard under which most cameramen work, there's not as much attention paid to composition as there used to be. In effect, the threat of panning and scanning for television has taken its toll on widescreen aesthetics. Much as certain senses that remain unused eventually atrophy, the artistry of widescreen composition has gradually gone the way of the dinosaur.

One way that directors and cameramen can protect their compositions is by filming in an aspect ratio closer to that of television--that is, by not shooting films in CinemaScope, Panavision, or 70mm. Director Martin Scorsese, though he has made a number of films in 1.85:1 and 1.66:1, has never made a

film in 'Scope, though he would dearly love to do so. He explains that he has avoided shooting in 'Scope because of what would happen to his widescreen compositions when the film was panned and scanned for broadcast on tv. (See Appendix A.) Though the option of filming in 'Scope remains, the knowledge that an increasingly greater percentage of a film's total audience will view it on a tv screen rather than in a theater has led to the more or less tacit acceptance on the part of the film industry of a new standard--that of 1.85:1--a standard that is more compatible than 'Scope with the demands of the television screen.

Though few directors would admit that the movement to a 1.85:1 norm is directly related to potential revenues from TV and video sales, there is some evidence which bears this out. David Lean is perhaps the most notable contemporary director associated with widescreen filmmaking. His The Bridge on the River Kwai (1957) was shot in CinemaScope; Dr. Zhivago was filmed in Panavision; and Lawrence of Arabia, and Ryan's Daughter were filmed in 65mm for release in 70mm.[4] But his latest film, A Passage to India was shot 1.85:1, a change brought about by the involvement of Home Box Office in the production. According to Lean's long-time director of photography Ernest Day (BSC), Lean "would have liked to shoot A Passage to India in 65mm if the budget had allowed for it and the climate in the exhibition and distribution side of our industry had been sympathetic to it." For many, the option of filming in 'Scope is, in effect, no

option at all. As a result, filmmakers have become more and more limited in terms of the range of aesthetic options available to them and, consequently, film has become more and more impoverished as a medium of expression.

Like the invention of panning and scanning, the advent of colorization has dramatically changed the conditions under which new motion pictures are produced, posing an indirect threat to creativity within the industry. Knowing that a subsequent owner of his or her film might choose to colorize it if it were made in black and white, a colorization-era filmmaker can only protect his or her work from that sort of alteration by filming it in color in the first place. We suspect that, as a result, fewer and fewer black and white films such as Manhattan or Raging Bull will be made. Rather than creating new options for filmmakers, colorization closes off options, potentially eliminating any future work in black and white.

As traditional distribution patterns change and as a greater percentage of a film's income derives from sale to cable tv or from the sale of pre-recorded videocasettes, both the kinds of films that will get made and the way in which they are made will become increasingly determined by the video market. A recent study conducted by the Wilkofsky Gruen Associates for Merrill Lynch predicts that by 1995 the sales of prerecorded video cassettes (PRCs) will reach the 700 million per year mark, amounting to over $14 billion in sales. They forecast that total 1995 PRC sales and rentals will add up to $20 billion while the

theatrical box office will take in revenues of only $8 billion. In other words, video revenues will come to almost two-and-a-half times that of box office revenues. (Current PRC sales for 1987 stand at about 110 million for $2 billion in revenues while box office receipts are over $4,2 billion, giving theatrical exhibition a two-to-one edge over video.)[5]

Video distribution has virtually killed certain forms of theatrical exhibition, such as second run houses and revival theaters. Indeed, one major Manhattan revival house switched to first run after noting that the video rental outlet across the street had taken their schedule, stocked all the films on it, and begun advertising throughout the neighborhood: "Why stand in line and spend $5 for a ticket when you can see it at home at your convenience for less than half the cost?"[6] Though certain major cities, like New York, Los Angeles, San Francisco, Washington, and Chicago, have audiences that continue to support revival houses, the drastic decrease in the number of revival houses and, consequently, in the demand for older product has resulted in problems for the few remaining houses which have an increasingly difficult time in obtaining revival material. The film academic community in these cities depends, in part, upon repertory houses for rounding out their own sense of film history and for providing students with a greater sense of film history than they can obtain in the classroom. Without them, our task as educators becomes all the more difficult.

It is clear that the video market can only support extremely

popular titles. Video will never be able to address the needs of a highly-selective movie audience that craves eccentricity. Since sales to television and distribution on video constitute an increasingly significant percentage of a film's total revenue, films that cannot be marketed to this mass audience might very well not get made.[7] The recent trend toward the production of genre films addressed to a teenage market--horror films, gross-out comedies, and beef-cake action adventures films--suggests that films made in the future will be increasingly constrained by the demands of the exploitation market. The market for foreign art films will continue to shrink, confined to a handful of art theaters in New York, Washington, Chicago, San Francisco, and Los Angeles. Traditional sub-markets for these art films, non-theatrical markets such as college film societies and film courses, are slowly disappearing, as films go directly from theatrical engagements to video distribution. Kurosawa's latest film, Ran, for example, was never made available in 16mm, going directly from commercial runs in the theater to video stores.

One argument that is generally made by colorizers and by others involved in the material alteration of motion picture films is that their activities in no way endanger the original work, which remains intact. The Society for Cinema Studies, however, continues to be concerned about access to the original which must be made available for educational purposes. During the past few years, according to Doug Lemza of Films Inc., over eighty percent of American non-theatrical distributors have gone

out of business, ranging from giants like Audio-Brandon, MGM/UA, Universal 16, Twyman, and Westcoast Films to dozens of small mom-and-pop outfits. Medium-size companies that have survived, such as Kit Parker Films have witnessed a 75 per cent drop in business. Small distributers, such as Corinth Films and Images Film Archive, have remained in business only by entering the video market, which now provides them with over half of their revenues. Currently there are only two major sources for 16mm films--Films Inc. and Swank. Within ten years, there may no longer be any non-theatrical distribution of films in 16mm--at least not as we once knew it, that is, characterized by some depth and variety. As rental libraries have changed hands, they have also been consolidated, and a number of titles have disappeared. (See Appendix B.) At the same time, a number of anamorphic films are now available only in panned-and-scanned TV prints. Over the next few years, more and more titles are likely to disappear as the non-theatrical market continues to shrink. Citizen Kane will always be available for classroom rental in 16mm, but what of Orson Welles' Othello or The Immortal Story, John Ford's Sergeant Rutledge, Preston Sturges' Hail the Conquering Hero, Samuel Fuller's Fixed Bayonets and Shock Corridor, not to mention the hundreds of "B" films that have disappeared, from Raoul Walsh's College Swing and Anthony Mann's Border Incident to Phil Karlson's 99 River Street? How will their absence change the terrain of film studies? We will certainly no longer be able to teach courses on marginal films (B

films, film noir, and certain exploitation films). It is already virtually impossible to teach a course on widescreen films because crucial works, such as Bigger Than Life, The Girl Can't Help It, Ride the High Country, and others, are not available in 16mm in anamorphic prints (though panned-and-scanned versions struck from negatives made for television are available and are being used knowingly and unknowingly by film teachers across the country).

We suspect that the only films that will be available for classroom use will be respected classics--canonical works. And these same films will surely be available on tape and disc, making it increasingly tempting for teachers to use these, inferior materials for teaching purposes.

The sorts of "old" films that will be made available on tape and disc will be necessarily limited, in terms of variety, by the titles that video distributors deem marketable. Silent films and obscure sound films will only be available for viewing in museums and archives. But even archives will be of little use to film educators and scholars in the future. With the exception of the Museum of Modern Art, American archives do not make films available for classroom rental. And though scholars are permitted to study films in archival collections on the premises, more and more archives are providing scholars not with the original film but with videocassettes of the film. The Library of Congress and the UCLA Film Archives, for example, have adopted a policy of making films available for viewing on videotape.

Since they do provide letterboxed versions of widescreen films, this policy may not initially seem to pose much of problem to scholars. But for anyone interested in studying a film's images, video is a poor substitute for motion picture film. One statistic will explain why: the contrast ratio, that is the ratio between the brightest and darkest elements in the image, for 35mm motion picture film is 300-to-1; that for an image on television is only 30 or 40-to-1. As a result, the image of a film transferred to video is low in contrast and lacks the detail of the original.

The disappearance of non-theatrical films from circulation will mean that future generations of film-makers will be trained in a new canon of film classics--the box-office successes (and a handful of enduring classics like Citizen Kane and colorized versions of Casablanca) that made it to video. This impoverishment of America's rich film heritage and restriction of its film culture cannot but result in an impoverishment of its film-making in the future.

In an attempt to address the increasingly serious problem of film availability, we would like to propose a national film clearing house, established in conjunction with archives, non-theatrical distributors, and members of the academic community, that would provide educators access to films for classroom use. This clearing house would compile lists of unavailable titles that educators normally use, provide funding for the striking of prints, supply films for classroom use only, and oversee the

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payment of rentals for these films to the distributors who own the rights to them. This clearing house could be funded through a tax levied on the sale of blank videocassettes and on the sale and rental of prerecorded videocassettes. This tax might also be used to fund American archives engaged in film and television preservation.

In conclusion, the film academic community sees the teaching of film history and the transmission of our American film heritage to present and future generations threatened by the new technologies of colorization, panning and scanning, and lexiconning. We find that more and more young students must unlearn what thay have learned about the history and the art of the American motion picture by watching films on television. At the same time, we find it increasingly difficult to do this, given the decline of repertory exhibition and non-theatrical distribution. If steps are not taken to protect our films from the new technologies which alter them for television, we can only predict a course of decline in the standards of American filmmaking in the future, an increase in the visual illiteracy of American culture, and the demise of one of our nation's greatest artforms.

Notes

1. In 1967, only 200 colleges offered courses in film. By 1978, over 1,000 colleges had film courses within their curriculum, over 4,200 separate courses in film studies were listed, and over

150 universities offered degrees in film. This does not include secondary schools where feature films have been increasingly used in the teaching of history, foreign languages, and English.

Today, our membership and that of the University Film and Video Association teach over 5,000 film courses a year. We estimate that non-member colleagues teach an additional 1,500 film-related courses a year (on the college and graduate school level).

2. Colorization is a process that involves the use of modern computer technology (the Dubner CBG-2 Graphics Computer) and of standard video signal processing to transform a black and white video signal (a one-inch tape made from original 35mm material) into a color video signal (a three-quarter or half-inch videotape), which is then used for broadcast and/or distribution purposes.

Panning and scanning is a process that involves the rephotographing and recomposition of widescreen films so that they can be shown on TV, which has a significantly narrower aspect ratio (i.e., ratio of width to height) than do screens in the theater. Panning and scanning is not a simple process. In the case of CinemaScope or Panavision films, for example, the original 2.35:1 aspect ratio is "translated" into the "safe area" of 1.33:1 for TV broadcast. This results in an image loss of approximately 50%. (Even on the broadcast of old films, shot in the 1.33:1 aspect ratio, TV crops the films slightly on all four sides in order to compensate for "over-scanning." In other words, the "safe action area" for TV broadcast, i.e., that area of the original film which a standard TV receiver displays, is less than that of the original 1.33:1 motion picture frame. Even films made before 1953 are somewhat cropped, as can be seen in title sequences in which letters on the extreme right or left are frequently missing.)

For films that were initially shot in a 1.66, 1.75, or 1.85:1 ratio, panning and scanning is a relatively simple process. If the film was shot full-frame, there is essentially no panning and scanning in the transfer process. The TV print will just contain information that would have been masked out in projection. As a by-product of this, however, what was a close-up in the theater becomes a medium close-up on TV; medium shots (from waist-up) become three-quarter shots (from knees-up) and so forth.

If the film was shot in VistaVision or with a widescreen plate or mask in the camera aperture, that masking will appear on the original camera negative and on all prints. Network television refuses to show films that are masked. As a result, these films are routinely cropped on either side and blown up to full frame, losing up to 30% of the original image in the process.

Panning and scanning is even more disastrous for films shot in 70mm, CinemaScope, or Panavision (which have respective aspect ratios of (2:1, 2.35:1, and 2.35:1). Almost half of the original image is cropped. The pan and scan procedures employed for these extreme aspect ratios involves a special machine that can

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unsqueeze an anamorphically-compressed image and project it on a screen. The machine is also outfitted with a view finder whose marker lines indicate the TV safe action area. These lines are then superimposed over the unsqueezed 'Scope image. The operator successively reframes the original image, selecting whatever is considered the most important action for inclusion within the borders of the TV frame. The positions of these reframings, which may shift for each individual frame, are recorded on a computer tape which is then used to automatically shift the head of an optical printer from one predesignated position to another during the transfer process. The finder frame can be shifted horizontally through a number of successive positions, which, over the years, have evolved from three (covering the right, center, and left portions of the unsqueezed image) in the late 1950s, to nine or twelve in 1961, and to sixty or more today.

Scanners can pan across a 'Scope image or cut from side to side; both procedures, however, introduce a foreign aesthetic pattern into the original, shifting the spectator's attention in ways that the original filmmaker never intended. In effect, panned and scanned versions of widescreen films constitute secondary re-readings of them, often by a sensibility that is completely different from that of the original filmmaker. For example, in Otto Preminger's Advise and Consent, the Panavision frame holds a variety of disparate politicians, each with his own goal and strategy for attaining it, within the unified space of the Senate. The narrative of the film, which culminates in a deadlocked vote for a new Secretary of State, demonstrates, on one level, the democratic notion of a necessary balance of powers. Preminger's original blocking of characters within the widescreen frame graphically illustrates this system of checks and balances. Panning and scanning introduces cuts into these long takes, destroying the intricately worked-out equilibrium of opposing forces in the original.

In some instances, panning can be comical in effect. Unlike most 'Scope films, the title sequence for Joshua Logan's Picnic is panned and scanned rather than shown squeezed or masked. (Contractual agreements stipulate that the credit sequence be shown in its entirety; thus credit sequences are frequently shown with their original anamorphic compression intact, ensuring that every name will be seen.) In the panned and scanned credits of Picnic, star William Holden's name appears first as "William Ho" then, after panning to right, as "m Holden." Rosalind Russell gets similar treatment, though in slightly smaller letters; she evolves from "Rosalind Rus" to "ind Russell." Cameraman James Wong Howe suffers similar indignities, as do the names in the technical credits which are detached by a pan from the jobs they performed. The literal nature of the motivation for the pans here calls attention to the arbitrariness of the process. The panning in the remainder of the film is just as arbitrary, though a bit harder to see because we aren't forced to acknowledge its absurdity in quite as obvious a way.

The rule of thumb for panners and scanners is to follow the

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action, which simply translates into holding on whoever is speaking or following the movements of the central character. In a film like Rebel Without a Cause, dialogue sequences between two characters, originally shown in two-shot, routinely drop whoever is listening when reframed for TV. Alienated youth becomes even more alienated when panning and scanning deprives them of someone to listen to their problems. James Dean's performance in Rebel and East of Eden loses something in the pan and scan process. Dean carefully positions his body in relationship to the other characters around him, often turning it slightly away from them so as to isolate himself in a somewhat private space of his own. But this eccentric spatial choreography is lost when panning and scanning focuses on Dean alone. In fact, there is one curious moment in the TV version of East of Eden that is symptomatic of certain problems that panning and scanning introduces. While Raymond Massey, who plays Dean's father, talks on screen left with a group of characters, Dean wanders about in the background on the extreme right. Instead of observing pan and scan convention and focussing on Massey, the scanner perversely watches the silent figure of Dean in the background. This may be a subtle attempt to drive home the impact of the father's words upon his son, but it is just as likely to be an instance of idolatry. The scanner's privileged selection of Dean here and in countless dialogue sequences which favor the actor elsewhere is, in part, a response to the subsequent importance that Dean and the cult that grew up around him after his death will have in movie history.

Lexiconning is a process which compresses or expands the running time of a film or television program.

3. High-definition television promises a possible solution to the aspect ratio problem, though disagreement exists as to whether HDTV should have a European (1.66:1) or American (1.85:1) aspect ratio. HDTV also introduces the question of what to do with 1.33:1 films and television programming. If they are cropped at the top and the bottom, we will merely have exchanged one form of alteration for another.

4. The extra 5mm are used for the soundtrack.

5. MPAA statistics delineate a marked decline in theater admissions from 1983 (1,196.9 million) to the present (1,088.5 million) which coincides rather remarkably with the dramatic increase in VCR households, which rose from 8.3 million in 1983 to 45.8 million in 1987. Many Americans are clearly being lured away from the theater by the home entertainment industry.

6. The 1988 Television & Video Almanac notes that there are over 50,000 prerecorded video tapes available in over 30,000 rental and sales outlets. Not all of these tapes, however, are motion picture films.

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7. I was once told by an industry analyst that only ten per cent of a film's total audience will see it in a theater; the other ninety per cent will view it on cable, network tv, or prerecorded vieo cassette. However, these figures have been seriously questioned by the MPAA which, though having no figures of its own, suggests a considerably greater percentage of a film's total audience will view it in a theater.

Appendix 4

JOHN BELTON

THE MONEY

Sight & Sound 57, no.1 (Winter 87/88)

Thanks to the concerted efforts of the Directors Guild, the American Society of Cinematographers, the Screen Actors Guild, the Writers Guild of America, the American Film Institute and others, the problem of colorisation has received national attention in the United States, culminating in a Congressional Hearing in May 1987 at which Woody Allen, Milos Forman, John Huston and Sydney Pollack spoke out on behalf of creative rights for film artists. But although colorisation provides a highly visible, focused issue for debate, touching as it does upon points of law and copyright, it is not the only issue.

In fact, it is merely a drop in the bucket when it comes to the area of creative rights, as the recent contract negotiations between the DGA and the Alliance of Motion Picture and Television Producers dramatically illustrate. The DGA Creative Rights Committee, headed by director Elliot Silverstein, sought changes in the basic contract for directors 'to prohibit any material alteration of a motion picture after delivery of the answer print.' Material alterations include 'colouring, time compression and expansion, panning and scanning, and change to allow exhibition in 3-D.' Unfortunately, the settlement of the contract dispute last July resulted in the tabling of those demands

Composing for CinemaScope: James Mason, Barbara Rush and Chris Olsen in Nicholas Ray's *Bigger Than Life*.



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before they could be fully negotiated.

Though the US Copyright Office has refused to grant copyright protection to colorised films, thus acknowledging the legal rights of producers to do whatever they want with their 'property', film-makers continue to wage a moral battle against the alteration of their work, a battle that extends beyond the high-profile issue of colorisation. Many directors and cinematographers, for example, point out that the practice of panning and scanning is as bad or worse.

Panning and scanning involves the rephotographing of oblong-shaped CinemaScope and widescreen films in order to make them fit the more or less squarish shape of the television screen. Colorisation is an addition to the image, and whatever is added can also be subtracted: a twist of the colour-control dial on TV sets equipped with such a feature can restore the black and white of the original image. (Many new sets do not have colour-control dials.) But panning and scanning, which effectively chops off fifty per cent of the original image, is an irreversibly negative phenomenon; it subtracts image that can never be restored.

Milos Forman contends that absolutely no changes should be made in a film without the director's consent. This would include colorisation, editing for television and cropping widescreen films so that they fit into the narrow-screen television format. 'Until there is legislation which forbids any alteration of a film without the director's approval and supervision,' argues Forman, 'broadcasters ought to let the audience know what they're seeing on TV. They should tell them that the film has been altered and in what way it has been altered and the person who did it should receive a separate credit. It borders on consumer fraud if a film has been altered and is still being advertised as "a Woody Allen film" or "a Warren Beatty film".'

Though most films that have been colorised or edited do contain a credit or a caveat, such as the vague 'Edited for Television' subtitle which encompasses everything from censorship cuts to compression or (in the recent case of *Rear Window* to which a three-minute dream sequence was *added*) expansion to fill a time slot, no film has ever had a title announcing that it has been 'Recomposed for Television', though virtually every film made since 1954 is, in fact, recomposed for television. For cinematographer Nestor Almendros, 'panning and scanning is much worse than colorisation.' Even though Almendros believes that good composition can survive almost anything and that even a fragment can convey composition, what we see on television is only an approximation of the original.

Forman likens television panning and scanning to 'the owner of an art gallery who decides to cut a painting so that it might better accommodate the space of his gallery.' Bruce Goldstein, whose nine-week series of American, European and Japanese films in 'scope sold out the house almost every night at New York's Film Forum last spring, used the series to make a polemical point about the panning and scanning of films on video, arguing that 'virtually all the artistry that goes into the making of a film—cinematography, editing, direction and even acting—is totally destroyed by panning and scanning, leaving only the bare bones of a story.'

Director Martin Scorsese, whose concern about colour fading led him to shoot *Raging Bull* in black and white, says that panning and scanning is one of the reasons he has never shot a film in 'scope. 'I've been obsessed with 'scope for years and would love to shoot everything in 'scope,' he explains, 'but I realise that when it's shown on TV the power of the picture will be completely lost.'

Film-makers like Scorsese know that today their work will be seen by more people on TV than in the theatre. Statistics indicate that only 10 per cent of a film's total audience views it in the theatre, that another 20 per cent will see it on videotape or cable and that 70 per cent will see it on broadcast television. Armed with this knowledge, directors can, like Scorsese with *The King of Comedy*, consciously design a film with television in mind. Or, like Almendros, they can try to 'protect' themselves for TV. 'I try to take the TV image into consideration,' says Almendros. 'I don't allow myself to make extreme compositions, and I try to keep what is important in the centre of the frame. Today every camera viewfinder has a dotted line marking out the TV frame area, and many directors of photography use it so that something will come across on TV.'

For Scorsese, films made during the past twenty years are not as badly damaged by panning and scanning as are films like Nicholas Ray's *Bigger Than Life*, which was made in what Scorsese refers to as 'the high 'scope' era. 'Directors today,' he contends, 'avoid the extravagances of composition and framing you find in 1950s 'scope films.' Joseph Biroc, who shot a number of 50s CinemaScope classics including Sam Fuller's *China Gate* and *Forty Guns*, agrees, noting that in current widescreen productions, because of the television factor, there's less attention paid to composition than there used to be.

Given these contemporary tendencies to compose with television in mind, the issue of panning and scanning has become more insidious, because it is harder for viewers to detect, and the industry, in order to protect films for possible television distribution, has become grudgingly complicit in this deception. At the same time, pan and scan technology has become more and more sophisticated over the years and thus harder to detect. Primitive pan and scan techniques involved simply rephotographing the centre portion of the original image, lopping off both sides. Single, fixed-position scanning often resulted in unintentional avant-garde minimalism in films that exploited the extreme edges of the frame. As David Parker of the Library of Congress points out, 'in a conversation between John Wayne and Robert Stack in *The High and the Mighty*, all you can see on television is the empty space of the cockpit between them.'

By the early 1960s, major improvements were introduced, permitting from seven to twelve different positions from which the original 'scope image could be viewed by a scanning telecine device. M. Peter Keane, who developed a seven-position pan and scan system for Screen Gems in 1961, explains that 'you could now cut from position to position during a dialogue sequence in order to keep whoever is speaking in frame and occasionally get a reaction shot of whoever is listening.' Earlier that same year, Alex Alden devised a similar system for Fox using twelve positions, which his tests concluded to be the minimum number necessary in order to cover the action adequately. Today, there are virtually an infinite number of possible positions, as well as new technologies which make optically introduced panning movements virtually indistinguishable from actual camera pans.

Even though panning and scanning technology is better, panned and scanned films have not necessarily improved in quality. Ralph Martin, a former editor who supervises panning and scanning for Warner Brothers, complains that many films today are panned and scanned 'on the fly' by a camera operator in a laboratory who may pan and scan a two-hour film in as little as two and a half hours of real time. 'It's better if it's done shot by shot by an experienced cameraman or film editor like we do here at Warners,' says Martin. Pete Comandini of VCM labs worked on the first film-to-video transfer back in 1980 (the film was *The Big Country*, which was shot in Vistarama) and says that they spent almost six months working on this single transfer, though today from six to twelve hours might be spent on average in panning and scanning a feature film.

Keane, now director of tape quality at HBO, insists on shot by shot panning and scanning and cut by cut colour correction, which he does in-house at a cost of from $6,000 to $8,000 per feature film. (It costs about twice as much if the work is sent out to a Hollywood lab.)

Martin says that the goal of the best panning and scanning is 'to try to preserve what the director did with the original film and to try to make it look its best.' But the dominant conventions of the pan and scan industry seem to be relatively simple—keep whoever is speaking in frame and try to be as unobtrusive as possible.

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The High and the Mighty: John Wayne, Robert Stack. On television, all you see is the cockpit between them.

In the best of all possible worlds, there would be no panning and scanning, but in the marketplace realities of our world, the practice would seem to be a necessary evil, the only way we can see films on TV. But though the best of all possible worlds may not be here, it certainly seems to be somewhere else. Italian television, for example, shows 'scope and widescreen movies with hard masking above and below the image in order to preserve the aspect ratio of the original work. If *The Robe* can be shown in CinemaScope on TV in Rome for Easter, why can't it be shown that way in the United States?

One of the great myths surrounding the pan and scan issue in the United States is that panning and scanning is the law, that Federal Communications Commission regulations prohibit the showing of films in what is known as the letterbox format—that is, with black masking above and below the image. But as John Reisner of the Policy and Rules Division of the FCC points out, there is no such regulation: 'About three years ago, there was a rule, which has since been dropped, regulating the use of defective broadcast equipment that results in image shrinkage, with no picture on the top, bottom and sides. Though someone might possibly confuse this with the deliberate masking of films for aesthetic reasons, letterboxing is an optical not an electronic matter and therefore not a concern of the FCC.' As Alex Alden explains, 'The networks refused to show films with hard masking; they wanted the image to fill the frame.'

Rick Altman, director of the Project for International Communication Studies at Iowa, attributes the difference between American and some European broadcast conventions to larger cultural concerns. 'American audiences,' he finds, 'have been trained by Hollywood to view films largely in terms of plot, character and overall narrative. Europeans are frequently more concerned with aesthetic elements. They're taught to look at images from a perspective that is influenced by the traditions of art history.'

Of course, many Americans share these concerns, and there is a market for letterboxed films on videotape and TV. But letterboxing seems reserved largely for product which might be loosely termed 'art cinema'. A letterboxed version of Kurosawa's *The Hidden Fortress* is now available on tape, and Criterion distributes Max Ophuls' *Lola Montès* in 'scope on laser disc, while Embassy Home Video has come out with a letterboxed version of the film on tape. Criterion's Jonathan Turell, who also offers Don Siegel's *Invasion of the Body Snatchers* on disc in 'scope and has just released *The Graduate* and *Blade Runner* in this format, points out that 'for widescreen films, the letterbox format is closer to what the film was like in its original theatrical presentation.' In the highly competitive video distribution market, Criterion has come up with a product that Turell feels 'is not merely different from the rest but better because of its fidelity to the original.'

While a director like Woody Allen has been able to negotiate a contract that enables him to control the video releases of his films, resulting in the letterboxed release of *Manhattan* in 1985, few other directors have the sort of audience that Allen has, an audience which is sufficiently imbued with art cinema sophistication to appreciate the widescreen format on tape. It's unlikely that audiences for *Star Wars*, *Rocky* or *Raiders of the Lost Ark* would put up with letterboxing. Indeed, in the May 1987 issue of *Video Review*, TV critic Jeffrey Lyons objected to a letterboxed review copy of John Hughes' *Ferris Bueller's Day Off*, claiming that 'for me, letterboxing is the worst desecration of a movie this side of colorisation.' Paramount, the distributor of *Ferris Bueller*, has objected to Lyons' review, asserting that the film was never intended for release in the letterbox format. Indeed, they released the film only in a panned and scanned version.

The debate over panning and scanning versus letterboxing remains thorny. Lyons maintains that with letterboxing, 'you end up seeing *less*,' because everything is reduced in size.

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David Parker sees the problem in rather concrete, Swiftian terms: 'Who ar[illegible] anybody three inches high?' Sc[illegible]ts that though letterboxing [illegible] a bit odd on small TV sets, Scope [illegible] on tape or disc look quite good on large 40-inch sets. But what is most important for Scorsese is that letterboxing 'makes you aware of composition and of the work that has been put into every shot.'

For Woody Allen and others who want their films to be seen properly, and for those who care about how our cinema past is transmitted to the present, letterboxing serves both as a symbolic gesture in defiance of panning and scanning and as a device educating viewers to the tremendous differences between film and television formats, differences which seriously compromise the artistic integrity of films on video. But it is a gesture that is unlikely to triumph over the economic imperatives that shape the film industry; what we see on TV is the shape that money produces.

Money drives the motion picture industry. Though it is undoubtedly one of film history's greatest ironies, it is none the less also entirely logical, given the profit motive, that Twentieth Century-Fox, which won an Oscar for introducing CinemaScope in 1953, thus providing the industry with something you couldn't get on TV, should win another Oscar in 1961 for developing a pan and scan system making it possible to show CinemaScope films on TV.

In the opening sequence of MGM's *It's Always Fair Weather* (1955), three war buddies who have just been discharged from the army bid farewell to one another at a New York bar, vowing to meet again at that same bar ten years from that day. To remind his pals of the date they are to meet, the character played by Gene Kelly tears a dollar bill into three equal sections, writes the date of their proposed reunion on them, and gives one to each of his friends.

Ten years later, during their reunion, the three former friends dance sideby side, but in different locales. In a split-screen effect that playfully parodies the three-screen process of Cinerama, Kelly, Dan Dailey and Michael Kidd synchronise their movements to the music of 'Once Upon a Time', each dancer serving, as it were, as an integral third of a widescreen composition that is torn like the dollar bill each man carries in his wallet.

Filmed in CinemaScope, *It's Always Fair Weather* dramatically calls attention, through the uncanny resemblance between the devices of the split screen and the tripartite dollar bill, to a remarkable fact. By a strange coincidence, American currency is almost exactly the same shape as CinemaScope; both have an approximate ratio of width to height of 2.35 to 1. If it's permissible to indulge in a bit of what Orson Welles once called 'dollar-book Freud', I might suggest that perhaps the film industry which so readily embraced 'scope in the early 1950s unconsciously identified it with the big bucks they hoped to generate with it at the box office.

But an aesthetic born out of dreams of profit has nightmarish consequences when subjected to the irreconcilably different medium of television. When *It's Always Fair Weather* is shown on TV, the original CinemaScope buck loses its bang. The dollar is torn in half, not in thirds; but this time there are no pieces left over out of which the original can be restored; the severed half simply disappears. We see Gene Kelly dancing with the dismembered limbs of Dan Dailey and Michael Kidd, whose faces and torsos are now cropped from the original image so that the dance number can be squeezed into the narrower aspect ratio of the television frame. This is the shape of television. And it gives you an image that's almost as worthless in terms of the original as that half dollar bill.

For over twenty-five years TV has short-changed the American public when it has shown CinemaScope and widescreen films and has done so without telling us about it. 'Film is such a fragile art form,' warns Scorsese, 'and a film can easily be hurt or even destroyed if we're not careful.' Panning and scanning is a genuine threat to the aesthetic integrity of the cinema. The furore over colorisation might just provide us with the opportunity to inform the public about it and to begin to make up for our negligence in the past, which has allowed it to go unchallenged for so long. ■

L[illegible]XICONNING

Colorisation, panning and scanning, cutting and editing for television, beeped out sound, and now 'Lexiconning'. For this latest example of how television treats cinema films, we are indebted to a letter sent by a Miami attorney, Donald L. Pevsner, to Elliot Silverstein, Chairman of the Directors Guild of America, quoted here in extract with Mr Pevsner's permission:

'I would like to relate the way in which I accidentally discovered the so-called "Lexicon" time-compression process in America's television industry.

'During the summer of 1985, WCIX-TV (Channel 6 in Miami) telecast the classic movie *Casablanca*. As the owner of a VCR, I decided to tape it for home use, off the air. And, as I wanted an unfettered movie, I stayed in front of my TV set to edit out the commercials. I fell over an hour into the film. I discovered that a key scene was missing: the famous scene in which Ingrid Bergman draws a gun on Humphrey Bogart to get the vital "letters of transit". Having, in essence, wasted over an hour of my time on a gutted film, I nevertheless continued to tape the remainder . . . on the theory that a chopped-up film was still better than having none at all in my closet. There I placed the finished tape, where it remained, unviewed, for a year.

'In summer 1986, Channel 6 again scheduled *Casablanca* . . . This time around, I decided to call Channel 6 ahead of time, to see whether they had mutilitated the film a second time around. I telephoned directly to the engineering department, where the answer I received was: "The film hasn't been edited, but it's been Lexiconned." Not understanding the meaning of "Lexiconned", I went ahead and taped this movie showing over the previous year's tape entry. When I was finished, having seen a film with the missing Bergman/Bogart scene restored, I proceeded to log the tape-counter numbers. And—surprise!—I found at least 5-6 minutes of leftover tape from the previous year. The *uncut* movie had run 5-6 minutes less than the edited version. What was going on?

'The answer: a Lexicon Time Compressor, manufactured by the Lexicon Corporation of Waltham, Massachusetts, was used to speed up *Casablanca* artificially. By doing this, WCIX-TV gained a full twelve minutes in a 120-minute time slot, using a 10 per cent speed-up adjustment on its machine, which "found" twelve minutes was used to cram in extra commercials, over and above an already abundant number.

'Hundreds of Lexicon devices have been sold to television broadcasting stations all across the United States. Independent stations are the prime customers, but it is probable that network-owned affiliates (and probably the networks themselves) own these devices as well. Additionally, film packaging firms supplying the television broadcasting industry may own such devices, supplying pre-speeded-up product to individual stations. Lexicons have been in use at least since 1983, when Tom Shales wrote the first known newspaper column about them for the *Washington Post*. I estimate that at least 1,000 such machines are in use today in the US—

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Appendix B
NON-THEATRICAL DISTRIBUTION PROBLEMS

Over the past few years, the market for non-theatrical distribution of films in 16mm for classroom use has undergone disturbing changes, largely as a result of the advent of video tape rentals (and the use of video instead of film for instructional purposes). Eighty per cent of American non-theatrical distributors have gone out of business, including such companies as Twyman and Westcoast Films. Though some small companies (such as Corinth Films, Images Film Archive, New Yorker Films, etc.) have survived, there are currently only two major sources for 16mm rental--Films Inc., and Swank. As rental libraries have changed hands, they have also been consolidated, and a number of titles have disappeared. At the same time, a number of anamorphic films are now available only in panned-and-scanned TV prints. Over the next few years, more and more titles are likely to disappear as the non-theatrical market continues to shrink. Though many of the titles listed below may not seem crucial to the academic canon of film masterpieces, their loss does impoverish the sense of film history that we transmit to students in the classroom. (Please note that this list may be somewhat in error. There has not been time to double-check all the titles with all the distributors involved.)

Film Availability

UNAVAILABLE IN 16mm

Absolute Beginners
Angels with Dirty Faces
Belle de jour
Berlin Alexanderplatz
Black Angel
Border Incident
La Chienne
College Swing (Walsh)
Discreet Charm of the Bourgeoisie
The Enforcer
Eraserhead (withdrawn by Lynch)
Fixed Bayonets
La Guerre est fini
Hail the Conquering Hero
Hearts Divided
Hell and High Water ('Scope)
Hitler's Madman
The Immortal Story
Je T'Aime, je t'aime
Lacombe lucien
The Lawless
The Lost Honor of Katharina Blum
Merrill's Marauders ('Scope)
Mexican Spitfire (orig. and 6 others in the series)
Moi, un noir
The Nights of Cabiria
99 River Street
Only Yesterday
Ossessione
Othello (Welles)
Paris Belongs to Us
Possessed
Sergeant Rutledge
Ran
The Rain People
Right Cross
The Ring (K. Neuman, 1952)
Salvatore Guiliano
Seven Sweethearts
The Shining Hour
Shock Corridor

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Shoeshine
Slumber Party Massacre
Stranded -
The Subjective Factor
There's Always Tomorrow
The Vanishing Virginian
Les Visiteurs du soir
The Young Girl and the Hooligan

NOT AVAILABLE IN 16mm ANAMORPHIC PRINTS
Apocalypse Now
Bigger Than Life
Brigadoon
The Cobweb
Contempt
Darling Lili
Designing Women
Dirty Harry
East of Eden
El Cid
Face in the Crowd
Fall of the Roman Empire
The Fly
40 Guns
Gigi?
The Girl Can't Help It
Home From the Hill
It's Always Fair Weather
Land of the Pharoahs
McCabe and Mrs. Miller
Man of the West
The Party
Porgy and Bess
Rebel Without a Cause
Ride the High Country
Savage Innocents
Seven Women
Spartacus
A Star is Born (Cukor)
A Time to Love and a Time to Die
A Woman is a Woman

Single, poor-quality 'Scope prints only for The Robe and River of No Return.

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Library of Congress - Copyright Office
Hearing: New Technology and Audiovisual Works
Colorization and Related Technologies
Washington, D.C., September 8, 1988

"THE LEGAL SITUATION UNDER THE INTERNATIONAL CONVENTIONS AND UNDER GERMAN AND FRENCH LAW"

Statement
of the
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I. Legal Issues

In general, under copyright law colorization of motion pictures does not give rise to just one legal question, but raises several intricate legal issues. Presented in logical order, they may be summarized as follows.

To begin with, a distinction has to be made between authors of pre-existing works and authors of the cinematographic work on the one and actors on the other hand. As far as authors of pre-existing works and authors of the cinematographic work are concerned, the first question is whether or not to colorize a black and white movie amounts to the preparation of a derivative work. If so, colorization would be subject to an exclusive right of the respective authors, provided, of course, the film and the pre-existing works have not yet fallen into the public domain.

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The next question would be to what extent the original authors have, by way of statutory presumption or by contract, transferred or assigned their exclusive rights to colorize the film to the producer. At this point, one additional question has to be answered: does broad contractual language or any legal presumption extend its effect to colorization? Under most copyright laws, the answer would be to the negative, if colorization would have to be regarded as a new form of exploitation which at the time the transfer of rights took place had not yet been known to the parties. If one comes to the conclusion, that the authors of pre-existing works as well as of the film are no longer the owners of the exclusive right to authorize colorization of the film, legal analysis has not yet come to an end: it may well be that authors can object to colorization of the film on the grounds of moral rights. The first issue in this respect is to find out whether or not colorization amounts to an alteration or mutilation of the film which is detrimental to the authors' reputation and therefore in violation of their right of integrity. Finally, if there will indeed be a violation of moral rights, the last question to be answered would be to what extent the authors have contractually waived this moral right and to what extent such a waiver would be recognized as valid and binding under the respective national copyright law.

The situation is similar for actors, who are considered performing artists. In general, they have the right to authorize the reproduction of their performances and this may well include the right to authorize an adaptation. Moreover, performing artists also enjoy personality rights. However, several copyright laws restrict or exclude these rights of performing artists, if their performances form part of a cinematographic work.

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In practice, two issues have to be added. The first one has to do with the fact that most, if not all of the black and white films in question have been realized in the first half of our century or maybe until the end of the fifties. Since quite a few states have enacted new copyright legislation after that time, the question is which national copyright applies to today's colorization of old films and also, which rules govern the contracts concluded under the old law. The second issue arises in international disputes and is a classical conflict of laws problem. The question is which national law governs the respective issues involved? Who, e.g., in his capacity as an author can invoke the provisions of a foreign country's copyright and according to what law would foreign courts decide who is to be regarded as an author? The case of John Huston's "Asphalt Jungle", which some weeks ago gave rise to the first litigation in France, is a perfect example (see IV below).

It is obvious, that at least to most of these issues there are no easy answers. No existing copyright law expressly deals with the colorization problem. This is true, because first, colorization is quite a new technology and second, colorization is such a specific problem that the more general legal rules of copyright law would not deal with it anyway, unless a blatant inadequacy of the existing principles had become apparent and an urgent need for special rule making had been shown.

Before we will summarize, as a national example, the solution of the issues involved under German law (III), followed by a short analysis of the French decisions - the first court rulings worldwide (IV), as it may seem - let us briefly retrace the fundamental principles as laid down in the international Conventions (II), since they form the framework of national protection schemes. This should be all the more of interest, since the US is about to adhere to the Berne Convention.

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II. The Framework of the International Conventions

A. Authors

1. Economic Rights

Under the Berne Convention for the Protection of Literary and Artistic Works [BC], member states have an obligation to protect both cinematographic works as well as the respective literary, musical or other pre-existing works (Art. 2 (1) and (6) BC). Duration has to be for the life of the author plus fifty years in the case of pre-existing works (Art. 7 (1) BC). In the case of cinematographic works, however, member states are free to grant protection only for fifty years after the work has been made available to the public with the consent of the author (Art. 7 (2) BC).

Protection has to be granted to works of authors who are nationals or residents of a member state (Art. 3 (1) (a) and (2) BC), and to works of non-qualifying authors which for the first time or within thirty days of first publication have been published in a member state (Art. 3 (1) (b) and (4) BC). In addition, enjoys protection any cinematographic work the maker of which has his headquarters or his habitual residence in one of the member states (Art. 4 (a) BC). Since the BC only deals with the protection of foreign works, it does not affect the protection granted by a state to works for which, according to the rules of the BC, this state is considered the country of origin. Protection in the country of origin is and remains governed by domestic law (Art. 5 (3) BC). In general, the country of origin is the country where a work has first been published (for details see Art. 5 (4) BC, which contains a special provision for cinematographic works first published in a

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non-member state, to the effect that the member state in which the maker has his headquarters or his habitual residence will be considered the country of origin (Art. 5 (4) (c) (1) BC)).

In any member state other than the country of origin, foreign authors enjoy the rights which the member states' respective laws grant to their own nationals (principle of "national treatment", Art. 5 (1) BC). Consequently, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed (Art. 5 (2) BC).

However, in addition to this, foreign authors can iure conventionis invoke the minimum rights granted by the Convention. Of interest in respect of the colorization of black and white motion pictures are: first, the Right of Adaptation (Art. 12 BC), defined as "..the exclusive right of authorizing adaptations, arrangements and other alterations of their works", and second, the special Cinematographic Adaptation Right contained in Art. 14 (1) (i) and (2) BC as to authors of pre-existing works and in Art. 14^{bis} (1) BC as to authors of the cinematographic work. The former group of authors has the right to authorize the cinematographic adaptation of their works and the former and the latter group both enjoy the right to also authorize "the adaptation into any other artistic form of a cinematographic production" (Art. 14 (2) and 14^{bis} (1) BC). At first sight, it may not at all be clear whether colorization amounts to another "artistic form" of a film. However, since Art. 14^{bis} (2) (b) BC expressly lists subtitling and dubbing as acts generally reserved to authors, it may be inferred that under the BC colorization as well constitutes an act subject to the author's authorization.

In practice, however, this does not have a decisive effect, since the BC does not preclude member states to enact legal

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presumptions providing that, absent any contractual agreement to the contrary, authors of the cinematographic work have assigned their adaptation rights to the producer. National legislation only has to leave the general contractual freedom to the authors to reserve their rights. It might be added, that according to Art. 14bis (2) BC, which provides for some mandatory procedural minimum rights for film producers with regard to film exploitation, but not to adaptation, member states have no obligation under the BC to enact any such legal presumption as to the assignment of the respective adaptation rights.

2. Moral Rights

However, independently of the author's economic rights, and even after the transfer of the said rights - be it by way of a legal presumption or by contract - the author also enjoys moral rights. Of interest here is that he may "object to any distorsion, mutilation or other modification of ...[a] work, which would be prejudicial to his honor or reputation" (Art. 6bis (1) BC). Member states of the Berne Union have an obligation to grant these rights at least for the term of protection of the economic rights. The BC does not further specify what acts do amount to such a distorsion, mutilation or modification, nor does it say what exactly is to be considered as prejudicial to an author's honor or reputation. However, it should be noted that the notion of "other modification" covers a broad range of changes made. The main focus therefore will always be on the question of detriment to an author's honor or reputation.

As to the question of whether or not moral rights may be waived, the BC is silent. It should be noted, however, that moral rights are inherently linked to the personality of the author according to continental European "author's rights" tradition, which has made its way into the text of the BC, and that therefore, moral

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rights may not be assigned nor waived as such. However, the courts in most of the European countries do accept that the author may either transfer or waive the power to exercise his moral rights. However, each moral right has what is called a "positive nucleus", which is regarded as being so vital to the expression of the respective personality that any waiver in this respect would be regarded null and void.

B. Performing Artists

As far as actors are concerned, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations [RC] only deals with economic rights and does not contain provisions on moral rights. However, member states are free to also grant moral rights to performing artists on a national level. Also, the RC does not regulate the adaptation or subsequent modification of the performance of a performing artist. Even if one would bring colorization within a "reproduction ..[of a fixation of a performance]..made for purposes different from those for which the performers gave their consent " (Art. 7 (1) (c) (ii) RC), this article would not apply where, in the case of a cinematographic work, the performer once had given his consent to the incorporation of his performance into the cinematographic work (Art. 19 RC).

III. Colorization under German Copyright Law

No German court had yet to speak on the issue of colorization. However, the situation under German law as to colorization may be summarized as follows.

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A. Authors

1. Economic Rights

For authors of films and pre-existing works created prior to the entry into force of the German Copyright Act of 1965, protection is granted according to the provisions of this Act, provided, the respective works have not yet fallen into the public domain (Sec. 129 Copyright Act of 1965). Under the current Act, it may be assumed that colorization is in fact an adaptation or transformation of a cinematographic work. Consequently, authors whose creative contribution to the film will be altered by the colorization process enjoy the right to authorize the colorization process itself (Sec. 23 of the Act). Moreover, irrespective of the fact whether colorization does affect the respective creative contribution, authors of pre-existing works as well as the authors of the film itself*) enjoy the right to exploit any cinematographic adaptations or transformations of the cinematographic work. However, in order to facilitate film distribution, the German Act contains legal presumptions to the effect that, notwithstanding any contractual agreement to the contrary, authors of pre-existing works as well as authors of the film work transfer the latter rights to the producer (Sec. 88 (1) (5) and 89 (1) of the Act).

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*) The German Copyright Act does not expressly state who has to be regarded as the author of the cinematographic work. As a matter of fact, there is a debate as to who is to be considered an author of a pre-existing work and who an author of the film work. The majority view considers an author of a pre-existing work not only the one whose work has been created without any reference to the film, but also the one who makes contributions to the film, provided, his contributions are distinguishable, independently exploitable creations, such as film exposés, treatments, screen plays and film music.

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This general legal presumption, however, knows an important limitation, since it only applies to a manner of exploitation known at the time the contract had been concluded. This is expressly provided for in Sec. 89 (1) of the Act with regard to authors of the cinematographic work. With regard to authors of pre-existing works the general rule, as stated in Sec. 31 (4) of the Act, should apply, according to which "a license purporting to grant rights with respect to unknown means of utilization, and any obligations with respect thereto, shall have no legal effect".

The question of paramount interest, therefore, is, whether colorization does constitute such an "unknown means of utilization" or not. Industry, on the one hand, argues that it is not, since films in their colorized version are exploited in as much the same way as their black and white originals, i.e. by way of TV and video sale or rental. Moreover, it is argued that technical corrections and modifications of light and color have always been used in the post-production process and have therefore already been known in the film industry at the time the traditional film material had been created. On the other hand, the underlying rationale of the general rule contained in Sec. 31 (4) of the Act is to prevent the author from and let him participate in any further exploitation, the economic impact of which he couldn't have judged and foreseen at the time when bargaining for remuneration. The material test under the rule is whether or not there is a new and technically as well as economically distinct and separable way of exploitation. Since industry itself considers the distribution of colorized black and white motion pictures a distinct area of marketing - albeit within the existing categories of video sale or rental and communication to the public by TV -, it may be argued that colorization has to be regarded as a new form of exploitation. As stated, the result would be that the legal presumptions of the

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German Copyright Act would not apply and that the producer of old black and white films, although owner of the adaptation right, would need additional authorization from the respective authors.

At this point of analysis one additional comment should not be lacking, although it is not quite based on the colorization issue as such: Anyone who undertakes to exploit colorized versions of older films through TV or video has to secure these rights anyway, if the original contract had been concluded prior to the date TV or video had become known as a form of exploitation. According to German court decisions,the respective date for TV has been around 1939 (Federal Supreme Court of May 13, 1982, 1982 GRUR 727 et seq.) and for video only in the early seventies (Court of Appeals Munich of June 27, 1985, 1985 ZUM 514 et seq. and Lower Court Munich of June 8, 1984, 1984 FuR 664 et seq.).

2. Moral Rights

Even if an analysis would lead to the conclusion that colorization could not be considered a new form of exploitation and that the producer has the right to adapt the film, the authors still would have moral rights as a second weapon. Since works are inherently related to and emanating from an author's personality, the author under Sec. 14 of the German Copyright Act as well as under most of the other European copyright laws has the "right to prohibit any distorsion or any other mutilation of his work which would prejudice his lawful intellectual or personal interests in the work." Here also, the Act, in order to facilitate exploitation of the film, restricts the moral rights of film authors as well as of authors of pre-existing works to "only gross distorsions or other gross injuries of their works or of their contributions". Moreover, with regard to cinematographic works authors "in the exercise of this right .. must take into

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account the respective legitimate interests of the other [authors] as well as the legitimate interest of the producer" (Sec. 93 of the Act). This, however, does not mean that an author would necessaryly be barred from exercising his moral right just in order not to hinder the exploitation of a film.

According to what has just been said, the debate focuses on the main issue of whether or not colorization does amount to a "gross distorsion" or to "gross injuries". It will, of course, be a matter for the courts to decide this question in each individual case. However, several criteria can be retained. First of all, colorization does not alter some pre-existing works and some film contributions at all. This would be true e.g. for the novel on which a film is based, the dialogue especially written for the film, or any music whether especially created with regard to the film or not. Also, the work of the cutter seems - if at all - only to a minor extent be concerned. This may be different for those who created the film props and becomes highly arguable in the case of the cinematographer and the director. It seems that whenever the special way of lightning, setting of shadows, contrasts and the like form an essential part of the artistic creation, colorization will most likely amount to "gross distorsion". This is certainly true with regard to expressionist films but also with regard to black and white films of a later period for which John Huston's "Maltese Falcon" or "Asphalt Jungle" might be a perfect example. Moreover, it would be beyond doubt that colorizing Woody Allen's "Manhattan" which purposely had been shot in black and white or Edgar Reitz' "Heimat", which in its original version cuts colorized and black and white filmed sequences, would constitute such "gross distorsions". Whether the same would be true for the less artistic B- and C-movies which, quite often, out of financial necessity or just because color film material didn't exist yet, were shot in black and white, seems at least arguable. But here too, it should be borne in mind

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that the shooting in black and white material almost inherently set specific criteria for the choices to be made, but which were creative choices nevertheless.

This moral right, under German copyright law, may not be transferred. However, the courts do recognize a waiver to the effect that the power to exercise the moral right may be transferred e.g. to the producer. But the validity of such a waiver is limited to what does not form part of the so-called "positive nucleus" of the moral right. Any "gross distorsion" or "other gross injuries", however, certainly form part of this "positive nucleus". Consequently, corresponding waivers - which have not even been common in German legal practice - would have to be considered void.

From the foregoing it may be concluded that under German copyright law at least those authors whose artistic creation has found its expression in the characteristics of black and white shooting, i.e. mainly the director, eventually the cinematographer, could prevent colorization of their films; if not on the grounds of their adaptation rights - since colorization may have to be regarded as a new form of exploitation to the effect that it does not come within the scope of old assignments of the adaptation right -, but certainly on the grounds of their moral rights.

B. Performing Artists

Finally, it should be noted that for actors the situation is different. First, the issues have to be judged according to German copyright law prior to the 1965 Act. Even if the protection of a performer's moral rights under the present Copyright Act (Sec. 83 of the Act) is not that different from the protection of his personality interests under the old law, an

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analysis of the gravity of prejudice caused by colorization leads to the conclusion, that in most of the cases there is no "gross distorsion" of an actor's performance, since large parts of it like gesture, voice etc. remain unchanged by the colorization. This may be different, however, if colorization does affect and materially distort an actor's mimic acting, or where the young hero, in the colorized version, appears pale as death.

IV. Colorization under French Copyright Law: the first Court Rulings

It has been in France that the courts ruled on the issue of colorization for the first time. Since they had to decide in a preliminary proceeding and did not have to try the case on the merits, however, only few issues have been decided. Nevertheless, some clarification has been brought about.

The facts of the case are as follows: the 5th French TV-Channel ["La Cinq"], for June 26, 1988 had scheduled a program on the subject of film colorization. La Cinq intended to show the colorized version of John Huston's "Asphalt Jungle" (which in France is known under the French title "Quand la Ville dort"), produced in 1950 by Metro Goldwyn Mayer, followed by a feature containing information about the techniques of the colorization process including examples, interviews etc. Eventually, a discussion should follow and, finally, the original black and white version of the film should be aired.

The heirs of the late John Huston filed suit and tried to enjoin La Cinq from transmitting the colorized version of this or any other film by John Huston which had been colorized with the aid of this new technology. The claim was based on John Huston's moral rights as director, who, shortly before his death - at the occasion of the colorization of the "Maltese Falcon" - had

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expressed his disapproval of the colorization process. Defendant, joined by MGM's successor Turner Entertainment which was responsable for the colorization, brought forward several arguments: first, defendants argued, that the integrity of the work was not violated, since the colorization process had not been applied to the original negative of the film itself. Second, according to the terms of the employment contract and of the instrument transferring the rights from John Huston to MGM, Turner as MGM's successor now owned all exploitation rights. Moreover, under US law, which according to defendants should govern the question of authorship, MGM from the very beginning had to be regarded as the original author, since the film was a work made for hire.

The Tribunal de grande instance de Paris, as court of first instance, in its ruling of June 24, 1988 (Consorts Huston et SRF v. Sté. d'Exploitation de la Cinquième Chaine, Sté. Turner Entertainment Co., Ref. 6941/88, 6967/88), however, did not follow defendants' arguments. Since the court considered the issues involved too complicated to be decided in a preliminary proceeding, it did not decide on the merits. However, exercising the discretion under Art. 809 of the New Civil Procedure Code to order all measures necessary to prevent imminent damage, the court weighed the prejudice to defendants against the damage which might result for plaintiffs defending John Huston's moral rights, in case the colorized version would be shown. In doing so, the court found that irreparable damage might result for plaintiffs, since given the particular care devoted to the research of contrasts by a very considerate choice of the colors filmed, moral rights of John Huston as the director of the film might well be violated. This interest, the court held, was overriding defendants' monetary interest with regard to the cost of extensive program advertising, which would ensue if the program could not be aired.

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The Paris Court of Appeals, the very next day, confirmed the lower court's ruling, by adding some clarifications (14th Chamber, 88-11420): first, the Court of Appeals held that the heirs of John Huston did have standing to sue in a copyright litigation, irrespective of the fact that the contracts between Huston and MGM are governed by US law. It seems that the court also was of the opinion that French law should as well govern the substantive question of authorship. Second, the Court of Appeals very clearly stated that the lower court was not at fault considering colorization a violation of the author's moral rights. It also concluded that the contractual clause contained in the agreement between Huston and MGM, transferring the adaptation right could not possibly have taken into account the process of colorization which did not exist at that time. Finally, the showing of the colorized version on TV might cause confusion in the minds of the public as to the true nature of the film. In order to avoid such confusion, the court held, even explanatory statements would not suffice.

It seems that the Paris Court of Appeals had quite a firm opinion as to the effects of colorization upon author's economic and moral rights under French copyright law. Moreover, the Court of Appeals seems to be determined to have French moral rights applied even if the work in question has been subject to a US-American contractual agreement. This to some extent corrects an earlier decision by the fourth chamber of the Paris Court of Appeals. In Rowe v. Stés Walt Disney et al. of February 6, 1986 (1986 RDPI N° 4, 160 et seq.), the court had refused plaintiff to invoke French moral rights where the contract transferring "the copyright" and together with it any exploitation or adaptation right, had been governed by British law. Also, in the earlier decision, the Paris Court of Appeals had held that moral rights only to a very limited extent be part of the French ordre public.

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This decision, however, has never been free of doubt, since the negation of moral rights by conflict of law rules would undermine the principle of national treatment as contained in the international conventions, according to which a foreigner - in respect of works for which he is protected under the convention - can claim the same rights which the respective country grants to its own nationals.

As to the future, it is not yet clear, whether this case involving John Huston's "Asphalt Jungle" will be tried on the merits or not.

V. Conclusion

The issue of colorization mainly raises three legal questions:

First, does colorization itself amount to adaptation subject to the author's consent and is exploitation of a colorized black and white film subject to the consent of the authors of pre-existing works, of the cinematographic work and/or of the actors as performing artists?

Second, who owns, by way of legal presumption or of contractual agreement the respective adaptation and exploitation rights?

And third, probably the most controversial of all three questions, does colorization in a given case violate author's moral rights, and if so, to what degree does the answer to this third question - not, however, to the first two ones - depend on the artistic value of each film concerned?

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STATEMENT OF COLOR SYSTEMS TECHNOLOGY, INC.

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STATEMENT TO THE U.S. COPYRIGHT OFFICE

Color Systems Technology, Inc. is pleased to submit its views regarding issues raised by the U.S. Copyright Office's inquiry concerning the effects of new technologies on audio visual works. Since the principal business of Color Systems Technology is the color conversion of black-and-white motion pictures and television series, our comments will be limited to colorization.

We believe it appropriate to advise the Copyright Office that the senior management of Color Systems Technology is comprised of executives who have had long and distinguished careers in the film industry. The conclusions and views put forth in this statement therefore reflect many years of experience with matters having to do with motion picture production, financing, distribution, business and legal practices, sales and marketing. For your convenience we have included a brief biography of some of the key management personnel at Color Systems Technology.[1]

[1] See Exhibits A through D

At the outset, we would like to offer a specific comment regarding the unusual broad scope and diversity of the areas and questions raised by the Office. We realize that the current inquiry is being conducted at the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, but we feel that there is a basic premise which may be overlooked and which must be recalled.

Article I of the Constitution establishes the principle of private economic incentives as the bedrock of our copyright system. The opportunity -- but not the guarantee -- of reward has been designed, throughout the history of our copyright laws, to promote investment of effort and of money not only in the creation of new works but equally in the adaptation of preexisting works, for the purpose of new, fresh, and innovative means of dissemination to the public. This theme has consistently proven its value through many generations of technologic development -- colorization is new, it is exciting, it is even controversial; but it is hardly a unique event in American copyright history or American motion picture tradition.

This principle of incentive to risk-taking has made the American entertainment industry the envy of and supplier to the world, and has enriched our lives and our society at home. The copyright system that the Copyright Office administers is a vitally important force of social expression, of artistic experimentation, and of freedom. It has never before succumbed to demands for subjective, aesthetic or like tampering of its great principles; it must not do so now.

Color Systems Technology is hardly apologetic that it serves as a paradigm example of the American copyright system in action. What we are doing is perfectly lawful, is consistent with -- and, indeed, implements -- existing U.S. Copyright Law, and results in making available to the public new interpretations and derivative works for enjoyment by a wider audience.

a. Description of the Technology of Colorization

Although Color Systems Technology previously presented to the U.S. Copyright Office (in connection with the Office's examination of the colorization registration question), a comprehensive statement of its colorization technology, we are pleased to attach updated descriptions as exhibits to this statement: these take the form of statements regarding our colorization[2] process as well as our colorization technology.

How and Why Colorization is Utilized After the Creation of an Audio Visual Work:

Colorization is utilized after the creation of an audio visual work in order to have films viewed by the public. Through the years it has been proved repeatedly that the worldwide audience prefers to view motion pictures and television in color.

We respectively submit, as evidence, the number of color television sets in use today as opposed to black-and-white,[3] the amount of TV color programming exhibited versus black-and-white,[4] and the number of motion pictures produced in color versus black-and-white during the past 10 years.[5]

[2] See Exhibits E and F

[3] According to the NEILSEN MEDIA PUBLIC RELATIONS OFFICE in Northbrook, ILlinois, 88.6 million households in the United States have at least one television set. 96% of these sets are color.

[4] According to the T.V. Guide for a one week period (August 20-26, 1988), 95% of all programs are color and 5% are black & white.

[5] From October 1978 to September 1987, approximately 1,924 films were made in color. During that same period, approximately 19 films were made in black & white.

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Once color photography was available to both the motion picture and television industries, the studios decided overwhelmingly to produce their product in color, and audiences demonstrated overwhelmingly their desire for that product.

The film and television series heretofore colorized and those that are being considered for colorization were made prior to color film photography being generally available to producers. In most cases, budgets and the availability of a color camera were the factors that determined whether a film would be produced in black-and-white or color.[6] Today, due to the lack of broad appetite for most films and television series which were photographed in black-and-white, they do not get meaningful exposure on television (other than at late hours or on a limited number of specialized cable stations) or on video cassettes, either because of consumer disinterest or video distribution resistance. In addition to not being widely viewed or desired by the general public, these films are thus no longer earning a return on investment for their owners. By using the colorization process many films and television series will be given a new life in the marketplace, therefore having a significantly better chance of being programmed on television and being made available on videocassette.[7]

As a result, they will now be accessible to, and viewed by, the general public rather than just a few, who themselves have had only limited access to the original.[8] Furthermore, this revitalization of a dormant product through application of a newly-developed technology will encourage future owners of film to always preserve the original material for availability to distribution/exhibition technologies yet to be invented.

b. What Consideration is Taken into Account When Deciding to Use Colorization?

Several factors apply. Clearly, the owners of black-and-white motion pictures and television series properly seek to color for economic reasons. Color product has performed financially better in the marketplace. No one has to apologize for the economic incentive to undertake color adaptations, anymore than one should apologize for the very constitutional underpinnings of our copyright system.

6 See attached statement by Leo Jaffe, former Chairman of the Board of Columbmia Pictures, Exhibit G.

7 See Exhibit H ("USA Today").

8 See Exhibit I ("Gentlemen's Quarterly") and J (Thomas Pryor, "Daily Variety").

There are, however, other factors for opting to colorize all or portions of a program. In the case of music video creators and producers of commercials, the primary factor is aesthetics. They wish to achieve a certain look or mood that they are able to create through colorizing. Selective color or colors in or adjacent to a black-and-white frame has become a common technique utilizing this new video technology (and, we believe, a technique stimulated by the public interest in the colorization process).

Occasionally filmmakers, not wishing to use black-and-white newsreel footage within a color television movie, turn to colorization to achieve a creative consistency for their film. For example, ABC Circle Films, in filming the docudrama, "Ike," starring Robert Duvall and Lee Remick, discovered that all of the usable World War II battle footage existed only in black-and-white. The producers, not wanting to use 26 minutes of black-and-white footage in a 90-minute film, used color-conversion and delivered a full-color motion picture in primetime to the public.

Similarly, NBC was faced with the same problem -- black-and-white newsreel footage within a color movie -- when they made "King," the story of Martin Luther King, Jr. The only existing footage of the Washington Peace March was not in color.

NBC solved the problem and was able to bring an interesting new entertainment to the public by utilizing this new technology.

Most television viewers recall the "Alfred Hitchcock Presents" series that ran for many years in black-and-white. When NBC and Universal Television decided to remake the original stories with new actors and in color, they turned to color-conversion as a creative way to retain the witty, original, personal Hitchcock introductions to each show. This decision was arrived at for aesthetic and artistic reasons. People may disagree as to aesthetic decisions, but never before in this country has that debate moved from the critics' circle to official government forums.

How Does the Use of Colorization Affect the Integrity and Economic Rewards Belonging to Those Involved in the Creation of the Original?

Since the production of a motion picture or television series is a uniquely collaborative endeavor, which employs the many talents of hundreds of people in its creation, it is impossible to generalize as to what economic effect colorization would have on each individual contributor.

However, it is apparent that if any of the original creators, in addition to copyright owners, retained a contractual economic participation in the property, they would once again benefit from a revitalized revenue stream, as they have now benefited from new VCR and videocassette technology. An example of such benefit known to Color Systems Technology is that involving the beneficiaries of the original black-and-white "Abbott and Costello" television series. It is anticipated that, upon the colorization by this Company of that half-hour television series produced in 1952, the appropriate heirs will, as provided in a recently negotiated agreement, receive substantially more income resulting from the additional revenues to be derived from the colorized version.

In regard to the question concerning the "integrity" of those involved in the creation of the black-and-white, we strongly believe that since the colorization process never alters or affects the original film negative and film materials, the integrity of its creators is fully protected and maintained.[9]

To our knowledge, no advertising has been used or statements been made to falsely represent any participation in the color conversion version by a creative participant of the original.

Have These Individuals Objected to the Use of Colorization, and If So, Have these Objections Been Resolved?

Once again, because of the many individuals involved in the creative process of movie making, it is impossible to generalize. Although the most strident and publicized comments concerning colorization have emanated from the film directors opposed to the process, many individuals and groups within all facets of the entertainment industry have praised and welcomed this new Emmy award-winning technology. We have included such documentation as exhibits to this statement.[10]

[9] See Exhibits K (Ron Haver), L (Richard Marin, Asst. Editor of Harper's magazine) and M (Gene Allen, former President of the Academy of Motion Picture Arts & Sciences).

[10] See Exhibits N through Q (Los Angeles Times; New York Times; Video Review; public opinion and TV viewers polls per Daily Variety; Don Lipper).

It should be noted, and as presented in certain of the exhibits attached hereto, that a number of film actors totally disagree with those directors and stars who are attacking colorization.[11] The comments range from enjoying the older films coming back to life, to letting the marketplace make the final decision. Of similar relevance is a letter to the editor, which appeared in "Daily Variety" of August 2, 1988, where a member of the cameramen's union challenged the position of the screen writers who were negotiating with the AMPTP earlier this summer to improve their own separate creative rights.[12] The writer emphasizes that films can only be made by collaborative effort. It might also be noted that when, at one time during the recent Writers Guild of America negotiations when the AMPTP was ready to give the screen writers more creative rights vis a vis the directors, the DGA suddenly and noisily reared up to protest anyone encroaching upon their domain.

[11] See Exhibits R through V

[12] See Exhibit W

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Although meetings have been taken place between Color Systems Technology and parties who have objected to colorization, to date we have been unable to resolve their objections without surrendering to their demand for a veto. We are not prepared or compelled to do anything which in doing so would jeopardize our right to conduct our business in a lawful manner and interfere with our fiduciary responsibility to our shareholders and employees.

c. What is Present and Future Use of Colorization?

To date, colorization has been utilized to color convert approximately 70 or more black-and-white feature films, a number of television shows, music videos and newsreel film. It is anticipated that in the future colorization will be utilized to achieve special effects in new television commercials and new feature film productions.

What is the Present Impact of Colorization on Those Involved in the Distribution of the Original and the Altered Version?

To date, Color Systems Technology alone has colorized approximately 50 motion pictures. In virtually all cases the distribution of the original black-and-white version and of the new colorized version is handled by the same owner or distributor or successor company.

The only exception to that situation that we are aware of is if the original black-and-white film is currently in the public domain and thus freely available from many sources. To present data dealing with the financial impact to those involved with the distribution of both versions we have included, as exhibits, published statements regarding revenues generated.[13]

There is no question that the colorized version of black-and-white motion pictures and television programs increases public access to the audio visual work. As reported in the Los Angeles Times of August 4, 1988, according to data provided by John Von Soosten, programming director at Katz Communications in New York (which acts as a sales representative and program consultant to local TV stations), films do get an initial audience boost after being colorized. The report states that "Miracle on 34th Street" (which was colorized by Color Systems Technology), "one of the few colorized films to be syndicated nationally, reached between 4.3 million and 8 million homes when the black-and-white version was shown on separate occasions during the holiday season in the 1980's. Those numbers jumped to 13.4 million in 1985, when it was first shown in color, but dropped back to about 8.7 million" in Christmas of 1987.

[13] See Exhibits H, Q and X

This report aIso confirms that "Yankee Doodle Dandy," the 1942 musical starring James Cagney was watched in about 5 million homes nationally when it was shown in color the first time in February, 1987, according to Mr. Von Soosten. That compares to an audience the previous year of about 3.5 million homes and about 4.1 million in 1984, when the black-and-white version was shown.

The article also reports that the earlier colorized films attracted larger audiences because of their novelty but, according to Mr. Von Soosten, distribution middlemen (in addition to copyright owners) still emphasize the licensing of the colorized versions to TV stations because they can charge a premium above the extra cost of producing a colorized film. Of course, as in all other business, initial novelty does wear off, and <u>some</u> films will not fare much better colorized than they do in black-and-white.

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What is the Impact of the Colorization on Public Access to Audio Visual Work? Do They Increase or Decrease Demand for Availability of the Original?

Historically, in the audio visual arts, modern versions of earlier works have created an interest in and a desire to see or hear the original. For instance, "West Side Story" created a mass audience awareness of "Romeo and Juliet." "My Fair Lady" familiarized a new generation with Pygmalion. The interpretations of music originally composed by Bach, Beethoven and Mozart and now created and performed by modern musicians have now provided millions of young people around the world with knowledge of and a desire to sample the music of the masters. What is important is that the original work of each of these examples, as it is with films colorized, remain accessible to the public in their original forms in addition to the modernized version. Indeed, Color Systems Technology willingly provides to colleges and other academic screenings 16mm. and/or 35mm. black-and-white prints of pictures it is now, or will be, colorizing.[14]

[14] See Exhibits Y and Z (acknowledgements of black-and-white screening prints for UCLA and the Pacific Film Archive).

Although colorization is comparatively new in the marketplace, it would appear that the new colorized version of a motion picture has created an interest in and a desire to see the original. This continued public access is demonstrated through the ongoing television programming and sale in video stores of the original black-and-white version of classic films, ie. "Miracle on 34th Street," "It's a Wonderful Life" and "Maltese Falcon."

Does the New Technology Increase or Decrease Demand for Or Availability of the Original:

"Variety" of August 3, 1988 reported that, despite an increasing push by suppliers to move colorized film classics into the video marketplace, one video store owner noted that many customers who want older movies are more interested in black and white.

Other video retailers have reported mixed results, with some customers preferring the black-and-white version if both are available. Very often it depends on the picture itself -eg. the original motion picture, "Little Shop of Horrors," did better as a colorized videocassette than in its black-and-white video version.

In terms of overseas home video sales, it is reported that color is more important, according to Mr. Richard Gersh of Richard Gersh Associates, a leading public relations firm in the home video field. He says: "It is murder to try and sell a black & white film in Europe." The explanation is that Americans, with a longer history of television, remember and may have more nostalgia with respect to black-and-white entertainment than people in foreign countries who acquired TV sets when programs were already in color. In terms of consumer preference, it seems that "purists" and film buffs prefer the black-and-white video cassettes although, according to Steve Rosenburg of Premier Video in Marrietta, Georgia, "I have people who come in and rent the colorized version and then the next day rent the black and white."

At National Video, which comprises 355 franchise video stores in the U.S. and Canada, Mr. Bob Cook, its vice president of sales distribution, stated: "The generation that prefers black & white is beginning to wane. The younger generation doesn't know films from the buff standpoint. Colorization makes an extra market. I'm a marketing man and anytime I hear of an extra market I say, 'Do it!'"

A clear viewpoint from the television exhibition industry is expressed in the attached editorial from the broadcast industry's trade journal, "Electronic Media," (of June 27, 1988), which states in part: "Neither colorizing nor editing a film to fit a time slot does any damage to the original full-length movie. And in this age of home video, purists who take their black-and-white films straight can get them that way."

"Moreover, all available data indicate that people do like colorization: Colorized films far outsell their monochromatic counterparts in video stores, and syndicated sales of colorized films are booming. Why penalize TV for giving viewers what they want?"

The editorial adds that the effort by certain members of the Hollywood creative community to protect their favorite films is a mistaken effort. "The ultimate effect could be simply to convince programmers not to show these movies at all, rather than deal with all the headaches. And that's a result no one wants."[15]

[15] See Exhibit AA

2. Contractual Practices

Do Existing Contractual or Collective Bargaining Agreements Govern the Nature and Extent of the Use of the New Technologies:

The collective and individual bargaining practices in the motion picture and television industry start from the basic premise of the employer's originally owning all rights, which assures the Congressional intent of unhampered dissemination of copyrighted works.

It is, of course, well known that for over 50 years the motion picture industry, and subsequently the television industry, has had extensive labor negotiations and collective bargaining agreements with the talent guilds and the craft unions working in the film/tv industries. The collective bargaining agreements cover many, many areas peculiar to the interests of the respective guilds, and, in particular, the creative rights of directors and writers of motion pictures, as well as the sharing by the guilds, unions and their members in revenues derived from new methods and media of exhibition as such have developed over the years; e.g. - television, pay-TV and cable, videocassettes and videodiscs, etc.

Indeed, as indicated in the attached Notice (of July 23, 1987) from the Alliance of Motion Picture & Television

Producers ("AMPTP"), in the new 1987 agreement between the Directors Guild of America "("DGA") and the AMPTP (representing the major Hollywood studios and production companies), there is now a provision in Article 7 of this Basic Agreement providing that, "with respect to theatrical motion pictures the principal photography of which commenced on or after July 1, 1987, the Director shall have the right of consultation with respect to coloring, time compression and expansion, panning and scanning"... and certain other changes contemplated to be made after delivery of the answer print.[16]

Indeed, it was our company, Color Systems Technology, which originally offered directly to the DGA and then, subsequently through the AMPTP, the opportunity to accord the original director of the black-and-white film a reasonable opportunity to be consulted and to provide input on color theme, color selection, concept, etc. This offer was set forth in our letter (attached) of December 5, 1986 to Mr. Elliott Silverstein, Chairman, President's Committee of the DGA, in which we also invited the assistance of the DGA in our making contacts and communications with such original directors.[17] Unfortunately, despite our good faith offer of consultation and participation, the DGA continued to insist on a veto power over and above the rights of the copyright-holders.

16 See Exhibit BB
17 See Exhibit CC

Apart from the collective bargaining agreements, there are extensive and complicated negotiations in the motion picture and television industry involving lawyers, agents and other representatives for both the employers and the talent covering numerous items in the terms of employment (e.g. compensation, screen and advertising credit, revenue participations, etc.). Those directors (e.g. Woody Allen) and other creative artists who have proven their success and talent are able to negotiate many additional favorable terms in regard to compensation and rights. Naturally, lesser-known artists, whether newcomers or those whose pictures have fared poorly at the box office or in ratings, do not have the negotiating strength to effect better terms.

3. Foreign Practices

Have Foreign Countries Addressed any of the Issues Raised by these New Technologies:

In terms of our own experience in the foreign television and video marketplace, we can affirm that there is definite interest on the part of foreign broadcasters (free television as well as cable television) and video distributors to have colorized product made available for viewing, both of American origin and of local origin.[18] For example, Color

18 See Exhibit DD (BBC Enterprises)

Systems Technology has had such affirmative discussions with broadcast and pay-TV networks in France and with the BBC in the United Kingdom. In addition, owners and/or distributors of black-and-white programs in the United Kingdom, France, Germany (East and West) and the Soviet Union, among others, have made serious inquiries into the colorization of their feature films, television series and video programs.

We are convinced that, in addition to the audiences themselves, the broadcasters, distributors and program owners in those countries want the opportunity to have colorized versions of their black-and-white programs made available to their viewers and consumers, particularly their own local black-and-white programs which they find most difficult to attract modern TV-viewing audiences.

4. Possible Future Legislative Action

Is There a Need for Additional Legislation to Solve the Problems Caused by the New Technologies:

We firmly believe that there are no problems caused by the colorization technology that warrant any legislation. If there are continuing objections or dissatisfaction on the part of the creative artists, they should continue to be dealt with in the same fashion as was negotiated in the 1987

DGA Basic Agreement; i.e. in future collective bargaining agreements as well as in private contractual negotiations. Such has been the practice, custom and relationship in the film/tv industry since inception, and we firmly believe that any inconsistent or additional legislation would grossly, unfairly and inequitably upset existing contractual relationships. We also believe it would raise constitutional issues relating to restrictions on existing exclusive rights of copyright-holders and on the due process rights of producers, financiers, distributors, and other buyers and sellers who have entered into innumerable commercial transactions in reliance upon existing U.S. Copyright law and resulting commercial practices.

We believe it imperative to bring to the attention of the Copyright Office the fact that Color Systems Technology has expended over $55,000,000 in the development and marketing of its proprietary colorization technology through a series of public securities offerings.

Any unanticipated change to this long-established tradition of copyright holders' rights would greatly endanger this large investment by the Company's public shareholders. Consistent with the traditional rights provided under our historic U. S. Copyright Law, let the marketplace be the final arbiter, not self-appointed "guardians of the public taste."[19]

19 See Exhibit EE (Time magazine editorial)

We reiterate that no legislation is required, wise or appropriate. In particular, any attempt to impose upon the deeply ingrained American structure of "employment for hire," collective bargaining and individual contract negotiation the vague and subjective concepts of the droit moral would be dangerously disruptive. Whatever accommodations, accepted uncertainties or academic discourse have grown up around that doctrine over many decades in certain other countries, they can have no place in the thriving, vital American film industry. We are not asking any guarantee of commercial success. We, like our technological predecessors and those yet to come, are willing to take substantial marketplace risks with the consumer public, but what we cannot be deprived of is the legal framework of clarity and predictability.

We respectively submit -- and this view is shared by others in the industry as well[20] -- that all of this controversy, challenge and vituperation generated by the film directors is merely their disguised attempt to achieve through federal legislation what they have not yet achieved through collective bargaining or private contract negotiation. The federal legislative branch and the U.S. Copyright Office and

20 See Exhibits FF (Effects Associates Inc.) and GG (Robert Russett, Professor of Art and Media Studies)

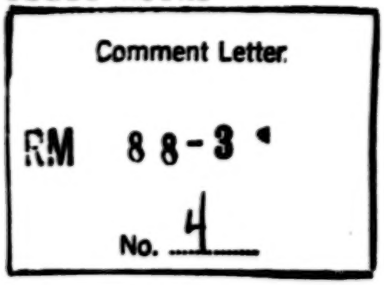
other federal agencies should resist granting to non-copyright owners new rights which properly ought to be obtained or sought by them in the private sector, particularly rights which contradict the basic premise of the exclusive rights of reproduction and exploitation to the legal copyright holder.

Is it Possible to Distinguish or Desirable to Distinguish Between Works Which Should Be Protected:

We consider it an undesirable and dangerous precedent for a government agency to be set up to try to distinguish and classify which works should be protected, notwithstanding the enactment of the National Film Preservation Board. It invites government to evaluate content and themes, it smacks of a form of censorship, and, if one work is to be labeled (as a dangerous substance?) on the grounds of colorization, why not also a film which, in the eyes of many, dangerously abuses the Holy Bible? Having the government involved in labeling or deciding what is artistic "abomination" is a small step away from abandonment of this country's most cherished values.

Before the
Copyright Office
Library of Congress

New Technology and Audiovisual Works	)	Docket RM 88-3





COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

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Table of Contents

		Page	
I.	Background	3	74
	A. The Colorization Process Is Performed on a Videotape Copy and Has No Effect Whatever on the Original Black and White Negative, Printing Materials, or Prints	3	74
	B. Turner Intends To Colorize Not Only Films, But Also Cartoons and Television Series	4	75
	C. Colorization Has Significantly Broadened the Exposure and Appeal of Classic Films	7	78
	D. Turner Offers Colorized Films Along with the Black and White Original, Allowing the Viewing Public To Choose the Version They Prefer	9	80
	E. Colorization Has Stimulated Interest in the Restoration and Preservation of Black and White Films	10	81
	1. The Film Preservation and Restoration Process Is Slow and Expensive	11	82
	2. Turner and MGM Have Spent Millions of Dollars To Restore and Preserve the Films in Their Collection	13	84
II.	There Is No Need for Any Further Regulation or Legislation Directed at Colorization	15	86
	A. Colorization Enhances Public Access to Classic Films While Offering Financial Returns that Can Be Used To Subsidize Film Preservation Efforts	15	86
	B. No Rights of Those Involved in the Production of a Film Are Affected by Colorization	19	90
	1. No Single Person Associated with a Film's Production Can Claim a "Moral" Right That Overrides the Preferences of the Copyright Owner	20	91

		Page	
	2. Colorization Is Far Less Disruptive to a Director's Original Vision than the Modifications a Film Currently Undergoes on its Way from Theater to Television Screen	23	94
	3. Directors and Others Who Work on a Film Are Fully Compensated for Their Efforts and May Negotiate for Whatever Additional Rights They Wish To Exercise over the Subsequent Treatment of the Feature	27	98
III.	Substantial Restrictions on Colorization Are Unnecessary and Would Violate the Constitution	28	99
	A. Legislation To Compel Certain Disclosures in Connection with the Showing of Particular Colorized Films Would Violate the First Amendment	28	99
	B. Restricting the Right To Show Colorized Works Would Diminish the Value of Copyrights and Violate the Just Compensation Clause	33	104
	C. The Current Version of the National Film Preservation Act, Although Greatly Improved Over Earlier Legislative Proposals, May Also Be Constitutionally Vulnerable	36	107
	D. The Lanham Act Provides an Adequate Remedy for Misrepresentation of the Origin of a Film or the Involvement of a Particular Individual	37	108
	E. In Sensitive First Amendment Areas, Voluntary Compliance Standards More Effectively Promote Public Interest Goals Than Do Government Mandates	39	110
IV.	Conclusion	40	111

Before the
Copyright Office
Library of Congress

New Technology and Audiovisual Works	))	Docket RM 88-3

COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

Turner Broadcasting System, Inc. ("Turner") submits these comments in response to the request for information issued May 25, 1988 by the Copyright Office. Over the past several years, Turner has paid $1.4 billion to acquire the world's largest collection of vintage films. Turner now owns the rights to the MGM library of 2200 features and the pre-1948 Warner Brothers library of 750 films, and holds rights to the RKO library of 700 features. We have a strong interest in the technological, legal and economic issues raised by the Copyright Office, and we welcome the opportunity to present our views in these comments and at the September 8, 1988 public hearing.[1/]

In the first section, we describe Turner's use of colorization technology to enhance certain titles among its film library to provide an alternative viewing experience for

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1/ Although the Copyright Office requests information on a variety of film modification and enhancement techniques, Turner will limit its comments to colorization and its implications.

the public. We discuss how colorization has greatly expanded the audiences for classic films and has fostered efforts to protect original black and white prints against destruction and obsolescence. We outline the procedures that Turner has decided to implement to ensure that viewers are aware that they are seeing the colorized version of a black and white original feature, including the following:

-- Colorized videotapes and cassette boxes will be labeled to indicate that the film is a colorized version of a film originally made in black and white;

-- The black and white version of each colorized motion picture will always be made available for theatrical and television distribution;

-- The black and white original of each colorized film will be carefully preserved; and

-- A black and white copy will be deposited with the Library of Congress.

In the second section, we discuss how revenues from colorization provide financial incentives to conduct vital film preservation and restoration efforts and to widen distribution of rarely seen films. We also analyze and reject the argument that colorization conflicts with the rights of directors or others associated with the production of films, and describe how colorization is a necessary and proper adjunct of a copyright holder's right to make derivative works from his copyrighted works.

In the third section, we examine the legal issues raised by various proposals to restrict the power of copyright owners

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to create and distribute colorized versions of films in their collection. As we show, some of these proposals would infringe the constitutional rights of copyright holders, by creating a film licensing authority with censorship power, and by usurping property rights without compensation. Statutory and common law remedies already in place offer sufficient protection for film makers and others who are concerned that viewers may mistakenly perceive that they were associated with the creation of a colorized version of their film.

I. Background

A. The Colorization Process Is Performed on a Videotape Copy and Has No Effect Whatever on the Original Black and White Negative, Printing Materials, or Prints.

The colorization debate has triggered charges that those who color-convert features have "destroyed" these classic films. On the contrary, colorization has absolutely no effect on the original black and white negative materials; the process is performed on a videotape copy that is used exclusively for television and videocassette showings.

Colorization, Inc., Color Systems Technology, Inc. (CST), American Film Technologies, and others have recently developed the technology that allows black and white features to be enhanced through the application of color. In the colorization process, an artist, working through a computer, first colors a single frame of a film by assigning one of

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thousands of possible hues to each of the hundreds of thousands of pixels that comprise each frame. To determine which colors to assign to a particular frame, artists do extensive research on the making of the film, and when possible, consult people who worked on the the film to simulate as closely as possible the original colors. By means of the computer, these colors are carried over into the next frame until the scene changes. The process is currently slow and expensive, and can cost over $3000 for each colorized minute. Technological improvements, however, are expected to generate lower costs in the future.

In 1987, CST received an Emmy for Outstanding Achievement in Engineering Development. Dubner Computer Systems, Inc. and Colorization, Inc. have also received awards for their work with colorization.

B. Turner Intends To Colorize Not Only Films, But Also Cartoons and Television Series.

More than 2,000 of the films in Turner's library and half of the 1000 hours of television programming are in black and white, accounting for perhaps one-third of the libraries' value. Turner has contracted with CST to colorize one hundred films, and has an option to color 100 additional features. CST is presently colorizing two features per month. The cost is approximately $300,000 per film.

Films whose colorization has been completed include "Yankee Doodle Dandy," "42d Street," "Casablanca," "The Maltese

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Falcon," "Captain Blood," "The Sea Hawk," "Father of the Bride," and "They Drive by Night." Turner also recently reached an agreement with American Film Technologies to colorize twelve pictures with an option for another 48. Films that have been colorized under this agreement include "Boomtown," "A Catered Affair," "They Were Expendable," and "Key Largo." In all, thirty-seven films have been colorized, nine are in the process of colorization, and twenty-six titles are scheduled to be color converted in 1989. A list of films that have been or are to be colorized through 1989 is included in Exhibit A.

Although public attention has focused on such films as "The Maltese Falcon" and "Casablanca," most works to be colorized are noncontroversial and currently are not significantly viewed in their black and white form. Titles will include primarily action/adventure films, westerns, some dramas, and some comedies. Action and western films have proved especially popular in colorized form.

The quality of color-converted films continues to improve. "The Sea Hawk" and "Captain Blood" are much better than the original "Miracle on 34th Street" and subsequent "Yankee Doodle Dandy," and "Casablanca," "The Americanization of Emily," and "Key Largo" are even better.

Turner is also colorizing works other than films, such as cartoons and old television series. These include, for

example, the 120 "Popeye" cartoons that were made before the 115 "Popeye"-color cartoons were created. The cartoon colorization process relies on a different process than the film procedure described above. It is known as cell coloring, and creates color versions as good as the original color "Popeye" cartoons. Some Warner and MGM cartoons originally shot in black and white will be colorized using the film coloring process.

Turner plans to colorize 36 episodes of "Gilligan's Island" that were made in black and white. These will be added to the 62 episodes that were originally made in color, to create a complete color series. Turner is considering colorizing the remaining episodes of "The Man from U.N.C.L.E.", which were shot in black and white, and some other black and white series.

Other film owners besides Turner have actively promoted colorization. Hal Roach Studios, which owns half of Colorization, Inc., has agreed with Otto Preminger films to colorize "The Moon Is Blue," "The Man with the Golden Arm," and "Advise and Consent." Walt Disney, Fox, and Columbia are actively pursuing colorization projects. Colorization, Inc. has colorized films that are already in the public domain, such as "Topper," "Way Out West," and "It's a Wonderful Life."

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C. Colorization Has Significantly Broadened the Exposure and Appeal of Classic Films.

If the measure of success of colorization is public response, the process has been an unqualified hit. Three years of data show that colorization has vastly expanded the viewing audiences for color-enhanced films. It is evident that Americans today simply prefer color -- particularly the younger generation that has grown up in an almost totally color viewing environment. Some examples:

-- Turner has broadcast "Carbine Williams" six times on SuperStation TBS since its colorization. On all but one occasion, the film has enjoyed a larger audience share than the average of the other films shown that month during that time slot. On one occasion, the film outperformed the average of the other features by 35 percent.

-- The audience for the first showing of the color version of "Miracle on 34th Street" was over 600 percent greater than for all previous black and white television airings combined.

-- In the first six months that the color version of "The Maltese Falcon" was available, its audience has been five times larger than during its previous ten years in black and white.

-- "It's a Wonderful Life" entered the public domain in 1972. Because it is no longer protected by copyright, anyone in possession of a copy may sell or show it. Hal Roach

Studios colorized a copy of "Wonderful Life" and acquired a copyright in the new colorized version. The first showing of the colorized version, during Christmas season 1986, was seen in 9.9 percent of television households nationwide and reached 150 markets, representing 96 percent of television homes. (By contrast, "Entertainment Tonight" is available in 92 percent of television homes.) The colorized home video version of the film has sold over 200,000 copies, compared to 60,000 copies of the black-and-white version, which has been available for a longer time at a lower price.

-- Colorized movies also do well in syndicated national ratings. For example, according to ratings based on the percentage of television households viewing the program, Turner's Color Classics Network One consistently scores a rating average of 6.0. This compares favorably with other first-run nationally syndicated series such as "She's the Sheriff" (5.2), "Mama's Family" (5.9), and "Charles in Charge" (4.9).

-- Polls show that the American public overwhelmingly favors colorizing black and white films. A recent Atlanta poll reported that 60 percent were in favor of colorization and 40 percent against; the numbers in Louisville were almost 70 percent in favor, 30 percent against. This preference for color is reflected in the fact that every program that the American networks offer is in color, and virtually all new feature films are produced in color.

D. Turner Offers Colorized Films Along with the Black and White Original, Allowing the Viewing Public To Choose the Version They Prefer.

Colorization expands viewer choice. Turner makes available new colorized versions of films for those members of the public who would like to watch color, while preserving and distributing the black and white copy of the film for those who prefer the original version. To achieve these objectives, Turner has decided to implement the following policies:

-- Turner will label both the color-converted videotape and the videocassette box to disclose that the product is the color-converted version of a motion picture originally made in black and white. All of Turner's colorized films will be advertised, promoted and labeled in a manner that fully discloses that they are colorized versions of black and white originals.

-- Viewers will continue to have full access to the black and white versions of colorized films. Turner will make the black and white version of each color-converted motion picture available for theatrical and television distribution, and where commercially practicable, will market videocassettes in black and white as well as color-converted versions. Only the black and white version is now available on film for theatrical and other uses; the colorized version is not available on film. In fact, it is common for Turner to offer the black and white and colorized versions of the same film to

different broadcast stations within the same television market. In those instances where Turner broadcasts colorized films, of course, viewers with color television sets may watch the black and white version simply by turning off the color on their set.

-- Turner will carefully preserve the black and white original of all color-converted motion pictures. A black and white copy of each colorized motion picture will be deposited with the Library of Congress.

A copy of Ted Turner's letter to Congressman Claude Pepper outlining this program is attached as Exhibit B.

E. Colorization Has Stimulated Interest in the Restoration and Preservation of Black and White Films.

Far from "destroying" films, Turner is at the forefront of those who are devoted to preserving this vital element of our nation's artistic heritage. In order to make a colorized version of a film, it is necessary to work on a videotape made from the best possible black and white printing materials or print. The opportunity to distribute colorized films has provided an economic incentive for preservation and restoration efforts. Turner's colorization activities are merely a byproduct of its extensive efforts to preserve and restore the films in its collection.

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1. The Film Preservation and Restoration Process Is Slow and Expensive.

A major problem with older films is that they tend to disintegrate with the passage of time. Before 1950, almost all professional motion pictures were produced and duplicated on film that used a mixture of cellulose nitrate and camphor. Although this type of film is very durable in heavy use and easy to splice, it is also highly flammable and has a limited life span. Once ignited, a roll of nitrate film is impossible to extinguish, even by submersion in water.

A nitrate-based film passes through five stages of deterioration. These stages include fading and discoloration, stickiness, appearance of bubbles, spread of bubbles and appearance of brown froth, and finally, deterioration into brown powder. During the deterioration process, the film itself releases gases with nitrogen and oxygen compounds which attack the film's image and base.

Restoring discolored black and white films is possible if the discoloration is not too far advanced. The silver image may be bleached in an oxidizing bath of potassium hexacyanoferrate (III) and the image may be brought out through use of a fast developer. Films at a more advanced stage of discoloration, however, cannot be completely restored. Images will contain a reddish or brownish tint after the restoration process is completed. Film material that has been irreparably damaged is worthless and must be destroyed immediately.

Nitrate-based films can be restored through the first three stages of deterioration, but during the last two stages the film can no longer be repaired.

Acetate films are much more stable than nitrate-based film, since the acetic acid is not flammable. The process of preparing a nitrate film for copying onto an acetate-based film, however, is slow and expensive. First, to preserve a nitrate-based film until it may be transferred to an acetate safety film, the process of deterioration must be retarded. The films must be stored at temperatures that do not exceed 6 degrees centigrade or 42.8 degrees Fahrenheit. The humidity level must be carefully monitored since excessive moisture stimulates the production of damaging nitrate gases and accelerates the disintegration process. If the atmosphere is too dry, however, the film will shrink and become brittle. It is difficult to create storage conditions that retard deterioration yet do not produce shrinkage or brittleness. Because of the possibility of explosion, nitrate films cannot be stored in buildings that are used for living or working quarters.

Transferring the film from nitrate to acetate is time-consuming. The film must first be examined foot by foot on a rewind table. If there are any splices or defects in the film, it must be respliced and repaired so that the nitrate film can run smoothly through the printer. The film is copied

at a speed slow enough to make a clear image on the acetate copy. It may require printing at speeds as low as ten or twenty feet per minute.

Although acetate-based films are much safer than nitrate films, they too require extensive care in storage. If the storage area is too dry, the plasticiser will escape and eventually cause the film to shrink and crack. At that point, it is no longer possible to project the film. Excessive humidity, on the other hand, will also damage the film.

Film archivists estimate that eighty percent of all American films made before 1930 no longer exist. The cost of preserving a single black and white film exceeds $12,000, and the cost of preserving a color film is more than $30,000.

2. Turner and MGM Have Spent Millions of Dollars To Restore and Preserve the Films in Their Collection.

After acetate-based film became the standard, the entire MGM library was copied on this safer, more stable type of material. This conversion included over 100 feature-length films and several hundred shorts and cartoons that were filmed in the three-strip Technicolor process.

During the ten years preceding 1986, MGM spent approximately $30 million to maintain film elements in its library and to transfer to safety film those materials produced before 1950. During the past two years, Turner Entertainment

Company has spent approximately $2,800,000 in restoration and preservation of its libraries, including amounts for laboratory charges, proper storage facilities to maintain temperature and humidity controls, and wages for trained personnel to handle the inventory.

After MGM acquired the Warner Brothers library, it initiated a major project to convert over 800 Warner features to safety film. Turner recently completed this project. Turner has also initiated a preservation program to convert to safety film 270 RKO features that are still on nitrate film.

Turner has also devoted significant resources to film preservation -- that is, maintaining the quality of film elements. These consist of not only the full feature negative, but also the sound, in both magnetic and optical form; foreign main and end titles; subtitled negative overlay; domestic and foreign version trailers; TV promotional trailers; and other elements associated with each film.

In addition to these ongoing preservation and restoration efforts, Turner is constantly engaged in specific preservation projects. Turner has restored the original, silent "Ben Hur" to its original 126-minute running time in 35 mm with a number of Technicolor scenes replaced. Turner has also created a new negative of "Gone with the Wind" from the original 1939 printing elements.

In response to a request by the Library of Congress for copies of 136 "most wanted" films for retention in their Film Deposit and Conservation Program, MGM provided copies of all available films requested. Indeed, 43 percent of the films requested were produced by MGM. Last year, Turner Entertainment Company participated in the founding grant of videotapes of 250 classic film titles to the Jack Haley, Jr. Film/Video Study Center of the American Film Institute in Los Angeles, a research center that will offer an invaluable resource to students of classic filmmaking.

II. There Is No Need for Any Further Regulation or Legislation Directed at Colorization.

A. Colorization Enhances Public Access to Classic Films While Offering Financial Returns that Can Be Used To Subsidize Film Preservation Efforts.

The current legislative and regulatory treatment of colorization effectively balances the rights of copyright holders, those of others associated with film production, and the interests of the viewing public. Article I, section 8 of the Constitution provides that:

> The Congress shall have Power . . . To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

The Supreme Court has observed that the limited grant of monopoly is a "means by which an important public purpose may be achieved," namely "to motivate the creative activity of

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authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired." Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 429 (1984). The task of copyright law is to strike the "balance between the interests of authors and inventors in the control and exploitation of their writings and discoveries on the one hand, and society's competing interest in the free flow of ideas, information, and commerce on the other hand." Id. As the Court observed in United States v. Paramount Pictures, 334 U.S. 131, 158:

> The copyright law, like the patent statutes, makes reward to the owner a secondary consideration. In Fox Film Corp v. Doyal, 286 U.S. 123, 127, Chief Justice Hughes spoke as follows respecting the copyright monopoly granted by Congress "The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors."

The linchpin of the copyright laws is that the rights to control the reproduction and distribution of a work lie with the copyright holder, not with others who may have had a limited role in the creation of the copyrighted work. It is Turner who owns the copyrights in its film library, not the directors and actors who participated in the making of the features. A "work made for hire" under the Copyright Act consists either of "a work prepared by an employee within the scope of his or her employment," or of certain works specially

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ordered or commissioned.[2] Under section 201(b) of the Copyright Act, "In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright."[3] If a work qualifies as a work made for hire, "the employer or other person for whom the [for hire] work was prepared is considered the author for [copyright] purposes."[4]

Moreover, under section 106 of the Copyright Act, 17 U.S.C. § 106, the copyright owner has the exclusive right, among other rights, to reproduce the copyrighted work in copies, to prepare derivative works based on the copyrighted work, and to distribute copies of the copyrighted work to the public. There is no longer any doubt that colorized films may be registered as derivative works. The Copyright Office has already ruled that computer-colorized films may contain sufficient authorship to justify registration, provided that the color modifications "as a whole, represent an original work of authorship." 17 U.S.C. § 101. The Office specifically

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[2] 17 U.S.C. § 101.

[3] Id. § 201.

[4] Id. § 201(b).

found that aesthetic or moral arguments about the propriety of coloring black and white films were not a part of its inquiry.

Preserving copyright holders' ability to colorize their works promotes both the owners' interest in achieving a return on their investment, and society's interest in the free flow of information. First, as the Court has observed, "the rights conferred by copyright are designed to assure contributors to the store of knowledge a fair return for their labors." Harper & Row Publishers v. Nation Enterprises, 471 U.S. 539, 546 (1985). The monopoly created by copyright "rewards the individual author in order to benefit the public." Sony Corp. of America, supra, 464 U.S. at 477 (Blackmun, J., dissenting).

The ability to register and distribute colorized works provides a vital economic incentive to engage in film preservation and restoration efforts. The simple but painful truth is that it costs money to restore films. As described above, Turner is expending hundreds of thousands of dollars each year on projects that contemplate the painstaking restoration of many of the nation's classic films. To a great extent, these expenditures make financial sense only because colorization and other possible new methods of exhibition and distribution will enhance the films' value and broaden their appeal to the American viewing public. To restrict Turner's ability to register derivative colorized works would imperil the film restoration and preservation efforts that are currently underway and that are contemplated for the future.

Second, colorization greatly enhances the public's access to feature films. Many of the titles in film libraries that are now being colorized for many years simply sat gathering dust. The statistics cited in the preceding section illustrate that the public has a keen interest in older films that have been given new life through color. Colorization will ensure that the public has easy access to those titles, while also stimulating interest in the original versions of classic films.

In this instance, then, there is no conflict between the interests of copyright holders and "society's competing interest in the free flow of ideas, information and commerce." Sony Corp. of America, 461 U.S. at 429. Both the financial interests of film owners and the public's interest in obtaining the greatest possible access to feature films point toward permitting unfettered colorization.

B. No Rights of Those Involved in the Production of a Film Are Affected by Colorization.

The current debate over colorization has pitted some film directors and actors against broadcasters, motion picture producers, and the viewing public. Those who advocate restrictions against colorization assert that original films were carefully planned to account for the use of black and white film; that this artistic judgment was sacrosanct and should not be disturbed; and that to colorize such films

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violates the director's artistic vision. As a legal matter, of course, this argument is plainly wrong; as we have discussed, the copyright holder is free to create and register derivative works from the original work. Even on "moral" grounds, however, the directors' theory rings hollow.

1. No Single Person Associated with a Film's Production Can Claim a "Moral" Right That Overrides the Preferences of the Copyright Owner.

Unlike most other art forms, a film necessarily reflects the creative efforts of not one but many individuals. The writer who first sets pen to paper to create the story outline; the producer who finances the film and in many cases supervises all aspects of the project; the actors who bring life to the characters on the printed page; the set designer who creates the artificial world in the film; the costume designer who clothes the actors; the cinematographer who creates the desired look and atmosphere; the musician who adds the background score; the editor who controls the film's pace and flow -- each contributes to the creation of the film experience ultimately enjoyed by the public. Who is to say that the contribution of the director is more important than the efforts of these other artists? Or that the director's sole aesthetic judgment of what is good or bad should take priority over that of the copyright holder?

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It is ironic that well-known directors are attempting to seek retroactive control over the destiny of films. In the studio heydays of the 1930's and 1940's, when many of the films currently being colorized were shot, the director of a film had very little say in the creative direction of the feature. Giant studios such as MGM, Paramount, and Twentieth Century Fox controlled every aspect of a film's creation, filming and distribution. The director was hired merely to fulfill the studio's vision. Frequently, more than one director worked on a picture, and it was rare for a director to be mentioned prominently in the publicity for the film. Actors, of course, were under contract with the studios and generally had no say in the creative direction of the features in which they appeared.

To note a few famous examples, three directors -- Richard Thorpe, King Vidor, and Victor Fleming -- were responsible for "The Wizard of Oz," yet only Mr. Fleming received screen credit. Mr. Vidor's contribution, consisting of the entire black and white sequence, has gone unpublicized except among film history buffs. "Gone With the Wind" had dozens of writers, but only Sidney Howard was mentioned on the screen. George Cukor was the original director on the project, but Victor Fleming took over for much of the filming. Sam Wood completed the direction of the film after Mr. Fleming had a breakdown. Again, however, only Mr. Fleming among these directors received screen credit.

To the extent that proposed legislation would confer rights on directors and others and restrict the ability of copyright owners to create and distribute colorized derivative works based on their copyrighted material, the proposals would turn the copyright laws on their head. The Copyright Act affords the copyright owner the exclusive right to create derivative works and to display those works to the public. The legislative proposals, however, would grant those who have no copyright the power to tell copyright holders what to do with their works.

The Notice raises this issue, requesting comment on which of the many individuals associated with the development and creation of a film should be entitled to exercise "moral" rights over its subsequent treatment. The question answers itself; the only sensible approach is to continue to vest those rights exclusively in the copyright owner. As the Notice suggests, even if one believed that certain parties associated with the production of a film should have creative veto power over certain changes in the material, there is no principled way to determine which parties other than the copyright owner should have such rights. They could include not only the director and screenwriter, but also producers, actors, cinematographers, screenplay authors, soundtrack composers, and set and costume designers. The result would be chaos. There is no reason to disturb the current system, which achieves a

proper balance between the rights of copyright holders and those who originally participated in the creation process on a for-hire basis, and whose rights were determined by explicit contractual provisions.

2. Colorization Is Far Less Disruptive to a Director's Original Vision than the Modifications a Film Currently Undergoes on its Way from Theater to Television Screen.

Even if film directors or actors somehow could claim precedence for their views over those of the copyright holder and others involved in the creation of the film, their argument rests on a flawed premise -- that broadcast of the colorized version of the film would violate the original artistic vision. Many of the films now being colorized would have been made in color originally if the technology had been available at that time. To presume that every director of a black and white film made before 1950 intentionally chose that medium over color is absurd. As virtually anyone who has seen "Yankee Doodle Dandy" will agree, that film cried out to be shot in color, and is universally perceived as more enjoyable in its bright, revitalized format.

More fundamentally, the directors' notion that only the original version of a film should be available for viewing is hard to reconcile with prevailing industry practice, which permits features to be altered quite substantially so that they will be seen by a wider audience. Whatever the merit of the

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view that films should only be enjoyed in their original black and white glory on a large theater screen, that opinion ignores and devalues the technological revolution that has vastly expanded the range of film viewing experiences available today.

Colorization has far less impact on a feature than many of the transformations that films already undergo when they are transferred from theater to television. Features must be reduced to a narrow version and then viewed on a tiny television screen. The booming presence of Dolby sound is currently reduced to a monaural tone heard from a television speaker. Broadcasters routinely cut out completely certain scenes they consider to contain excessive sex, violence or profanity; they lace the film with commercials; and they randomly delete portions of the film to force it into the desired time slot.

Other examples abound. Films shown on airlines frequently vary from the theatrical version. Motion pictures are, as a matter of course, dubbed into foreign languages for viewing abroad. Is it not more disruptive to the directors' vision, offensive to the actors, and jarring to the audience, to superimpose voices of complete strangers that do not mesh with the actors' speech movements?

Filmmakers generally are fully willing participants in the process that requires that films be adapted to appeal to television and other audiences. It is common today for a

filmmaker to shoot different versions of a film with varying degrees of violence, sex, or profanity depending on whether the filmmaker has in mind the theater, videocassette or television audience. A videocassette version of a motion picture may include scenes that were cut from the theatrical and television showings, or vice versa. The film industry has eagerly embraced these practices, recognizing quite correctly that different audiences will have different tastes and preferences -- and that the film's revenues will be maximized if the feature is tailored to different groups.

Those who oppose colorization would presumably also take the position that color films should be viewed only on color television sets. But directors have not sought to bar individuals from watching such films on their black and white sets, and for years there was no alternative. These viewers obviously do not experience the pristine version of the director's original vision, but they watch and enjoy the version that they are able to receive. In fact, because television cannot reproduce the shadings of light that characterize theatrical display of black and white movies, no television display -- with or without colorization -- can achieve a precise rendering of original cinematographic intent. Yet few would argue that producers should be forbidden from broadcasting films on television.

Turner also takes issue with the directors' implicit contention that a work of art cannot exist in any form other than the original. Artistic compositions are constantly being resuscitated, reworked, and revamped to make a different point or to appeal to a new audience. The music of Beethoven accompanies the evening news; modern remakes of classic stories, such as "West Side Story" and "My Fair Lady," are enjoyed by millions of people; and sequels and remakes of well-loved films fill the screens every year. People may legitimately disagree on which version is "better" than the other. The point is that it is not the job of the government to dictate that choice.

Colorization is far less objectionable, many would assert, than using films and other famous works of art to sell merchandise. "Rhapsody in Blue" is used to promote United Air Lines. Some ads now incorporate specially made scenes from popular motion pictures, such as the commercials currently being aired that feature scenes from "Who Framed Roger Rabbit?" touting Diet Coke. Such activities are far more "commercial" than providing an audience with a color-enhanced version of a classic motion picture.

Ultimately, the argument against colorization boils down to the theory that the public is not smart enough to be entrusted with the opportunity to decide which version of a film they would like to see. This elitist view cannot be

squared with this country's tradition of relying on the marketplace, rather than government edict, to determine which works of art will enjoy popular appeal.

3. Directors and Others Who Work on a Film Are Fully Compensated for Their Efforts and May Negotiate for Whatever Additional Rights They Wish To Assert over the Subsequent Treatment of the Feature.

It is particularly ironic that certain directors and actors seek to deprive the public of color-enhanced films, when it is the American people who have paid the money to watch their films and have made these people the national figures they have become. There is no doubt that directors, actors, and others are adequately compensated for their contribution to the making of a film. In many instances they are able to negotiate substantial royalties for subsequent showings of the feature on television and videocassettes. It is also common for directors to negotiate a continuing right to exercise control over the manner in which the film will be shown to audiences under various conditions.

Some assert, however, that it is only famous directors who have the box-office appeal and economic clout to be able to ensure that their artistic vision is protected. Directors are always free, however, to ensure that their film remains undisturbed; the trade-off will be that fewer people will see their film, or that they may sacrifice compensation for

control. The simple fact is that feature films would not be made if investors could not obtain a reasonable return on their investment.

The degree to which directors may exercise creative control over the disposition of the films in which they have been involved should be resolved by means of individual negotiations or by agreement between the Directors' Guild and the studios. It is not a matter that requires the attention of the Copyright Office or Congress.

III. Substantial Restrictions on Colorization Are Unnecessary and Would Violate the Constitution.

A. Legislation To Compel Certain Disclosures in Connection with the Showing of Particular Colorized Films Would Violate the First Amendment.

The Notice invites comment on the need for additional legislation to address the issues raised by the advent of new technologies. No such legislation is necessary. As noted above, existing law affords adequate protection both to those who participate in the creation of films and to copyright owners. The ability to negotiate within the context of current laws will sort out the rights of directors, actors and others associated with film production, while providing incentives to produce creative works.

Some of the legislative proposals on colorization that have been introduced in Congress would trample well-established

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speech rights protected under the First Amendment. The original version of the National Film Preservation Act of 1988, H.R. 4867, proposed the creation of a National Film Preservation Board that could select up to 25 significant films for inclusion in a National Film Registry "as an enduring part of our national cultural heritage." After a film was designated, no one could distribute or exhibit a "materially altered version" of the film unless accompanied by certain disclosures to the effect that the director or screenwriter did not participate in the making of the colorized version of the film. Unlike the legislation that was ultimately approved in the House-Senate conference, the Act would have conferred broad powers on the Film Board to impose additional burdensome labeling requirements.

To be sure, the government is free to express its view that certain films are classics. But the delegation to a commission of the power to single out certain films and to compel speech by the owners of those films would plainly contravene the First Amendment, for a variety of reasons.

First, the Supreme Court has repeatedly struck down efforts to compel corporations and others to disseminate viewpoints that are not their own. See, e.g. Pacific Gas & Electric Co. v. PUC of California, 106 S. Ct. 903 (1986) (utility was not required to place newsletter of third party in its billing envelopes); Miami Herald Publishing Co. v.

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Tornillo, 418 U.S. 241 (1974) (newspaper was not required to grant space for rebuttal of story). By singling out particular films for burdensome disclosure requirements, the government would be imposing on others its view that colorization of those films is undesirable. Although the government is free to express its views on a variety of matters, it is not at liberty to punish those who do not share those views by restricting their speech.[1/]

Second, the Film Preservation Act was glaringly deficient under the Constitution because it promoted no interest of public concern. A content-based restriction on speech, such as that embodied in the legislation, will be upheld only if it is "a precisely drawn means of serving a compelling state interest." See, e.g., Consolidated Edison Co. v. Public Service Commission of New York, 447 U.S. 530, 541 (1980). One interest that might be at stake here is a desire to preserve certain original films that some might consider an

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1/ In Meese v. Keene, 107 S. Ct. 1862 (1987), the Court upheld the use of the term "political propaganda" to define categories of information whose dissemination by foreign agents triggered certain registration and disclosure requirements. The Court found, however, that the term was a neutral one and that the government made no public announcement that a particular film was political propaganda. Moreover, in contrast to this case, the requirements in Meese were triggered by a neutral standard -- sponsorship of information by a foreign government. Here, the Film Board selects features according to the inherently arbitrary standard of whether the film is "culturally, historically, or esthetically significant."

important part of our national history and heritage. This legislation, however, would not have "preserved" any films. Because the original black and white features are unaffected by colorization, there is nothing to protect. Black and white films are available to the public and may be viewed along with the colorized versions.

Alternatively, the statute may have been aimed at preventing confusion among the public as to the source and nature of colorized films. But "differential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional." Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575, 585 (1983). Of course, there is no evidence that there is any confusion among the viewing public regarding colorized films. It is crystal clear that the only interests advanced by this legislation were private, not public -- the arbitrary aesthetic desires of a handful of individuals who in most cases had no hand in the making of the films being censored.

Third, statutes that impair rights of speech must exhibit a precise fit between means and ends. There are numerous less restrictive alternative means to promote film preservation without violating rights of speech. For example, the Copyright Office recently ruled that a claimant for a

copyright in a colorized work must deposit a complete black and white print of the film on which the colorized work is based. This requirement was based in part on a desire "to enrich the collections of the Library of Congress since in many cases the older black and white films were never registered or otherwise deposited with the Library."[5/] The Film Preservation Act would not accomplish significantly more than this deposit requirement. In addition, it is hard to see how the statute would have preserved "classic" films when particular features could be removed from the designated category of classics and thereby lose their mandatory labeling rights.

Fourth, the original legislation was constitutionally suspect because of the unbridled authority it would bestow on the National Film Preservation Board. It is well established that when the government delegates the power to restrict speech, it must strictly circumscribe the power of the licensing authority and make clear the standards by which it will make judgments. In the case of the Film Preservation bill, however, the Board would have had virtually unlimited discretion to amend the labelling requirements to make them more burdensome. Such amendments could have been expected in view of the fact that a majority of the Board would consist of representatives of designated film groups hostile to colorization.

5/ 53 Fed. Reg. 29,887, 29,889 (August 9, 1988).

Just recently, in Lakewood v. Plain Dealer Publishing Co., No. 86-1042 (U.S. June 17, 1988), the Supreme Court overturned a municipal regulation that conferred discretion on the mayor to deny an application for a newsrack or to impose such conditions on its grant that the mayor might deem "necessary and reasonable." Such unlimited power, the Court found, was incompatible with the long line of decisions requiring that there be explicit limits on the discretion of officials who make licensing decisions that have important First Amendment ramifications. See also Freedman v. Maryland, 380 U.S. 51 (1965) (motion picture censorship statute failed to provide adequate safeguards against inhibition of protected expression).

B. Restricting the Right To Show Colorized Works Would Diminish the Value of Copyrights and Violate the Just Compensation Clause.

An attempt to limit the right of copyright holders to produce and distribute colorized derivative works would be constitutionally suspect not only because of its affect on speech, but also because it would effect a taking of private property for public purposes without compensation in violation of the Just Compensation Clause of the Fifth Amendment. The original bill proposed by Representative Gephardt, which would have effectively conferred veto power over colorization to directors and screenwriters and would have prevented owners of

colorized works from copyrighting their films, was blatantly deficient in this regard. Recent Supreme Court cases have confirmed that the government has no power to single out the property interests of a particular individual and to regulate in a manner that sharply reduces the value of that property, in order to achieve a public benefit.

Regulation of a property interest that affects the value, use or transfer of property will constitute a taking if it goes too far. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Hodel v. Irving, 107 S. Ct. 2076 (1987) (provision requiring fractional interests in Indian lands to escheat to tribe caused an unconstitutional taking); Nollan v. California Coastal Commission, 107 S. Ct. 3141 (1987) (requirement that beach-front property owners permit a public easement across their land caused an unconstitutional taking). Courts will take into account such factors as the economic impact of the action on the property interest involved; the extent to which the regulation interferes with the reasonable, investment-backed expectations of the owner of the property interest; the character of the government action involved; and other factors. See Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124-25 (1978).

The Executive Branch has cautioned agencies to avoid or minimize actions that will have the effect of appropriating private property for public use without compensation. In

Executive Order 12630, 53 Fed. Reg. 8861 (Mar. 15, 1988), President Reagan ordered that federal regulators undertake a "Takings Implication Analysis" before taking actions that affect private property and thereby risk "undue additional burdens on the public fisc." The Order observes that "regulations imposed on private property that substantially affect its value or use, may constitute a taking of property," and that "governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."

The Justice Department has issued a detailed set of guidelines on takings for all executive agencies. Under those guidelines, a taking encompasses any policy or action that appears to have an effect "sufficiently severe as to effectively deny economically viable use of any distinct legally protected property interest to its owner . . ." Justice Department Guidelines ¶ IV(C). Agencies must prepare a Takings Implication Assessment to assess the likelihood that their actions may provoke a taking.

A restriction on the ability of a film owner to make and distribute colorized films in accordance with its copyright would undoubtedly constitute a taking that would require government compensation. Turner paid over a billion dollars

for its film library with the expectation that it would be entitled to prepare colorized derivative works. If Congress or the Copyright Office takes action to undercut those rights, a significant portion of Turner's investment will be lost. See Roth v. Pritikin, 710 F.2d 934 (2d Cir.), cert. denied, 464 U.S. 961 (1983) (divesting owners of their copyright interests by invalidating a prior agreement under the newly enacted copyright law constituted a "taking" under the Just Compensation Clause).

Moreover, as described above, no public interest would be served by the proposed legislation. In Nollan, the Supreme Court emphasized that the land-use regulation in that case had no nexus to a legitimate state interest. Similarly, in this case, enactment of the legislation would not foster the preservation of black and white films, but would merely lend a government stamp of approval to the arbitrary tastes of a select group of individuals.

C. The Current Version of the National Film Preservation Act, Although Greatly Improved over Earlier Legislative Proposals, May Also Be Constitutionally Vulnerable.

The version of the National Film Preservation Act that has emerged from the House-Senate conference represents a vast improvement over earlier measures. It raises, however, many of the same issues discussed above, and may ultimately fail to withstand constitutional attack.

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The bill would empower the Librarian of Congress to create a National Film Registry for the purpose of registering films that are culturally, historically, or aesthetically significant. No more than 25 films could be selected each year. Films that have been selected for inclusion in the registry and that have been colorized must include particular labels on film packages. The Film Preservation Board, however, no longer has the power to tighten the labeling requirements or to expand the definition of "material alteration."

Since this legislation does little more than codify many of the disclosure practices that Turner has already decided to implement, Turner does not oppose it. We still question, however, whether it would be able to withstand a direct constitutional challenge. The government will ultimately be required to demonstrate whether there is a compelling public interest that warrants singling out particular owners of colorized films for special burdens. There appears to be no interest that would justify treading on the First Amendment rights of film owners.

D. The Lanham Act Provides an Adequate Remedy for Misrepresentation of the Origin of a Film or the Involvement of a Particular Individual.

Some directors and actors are apparently concerned that their reputations will be affected because the public will mistakenly believe that they were involved in the production of

the colorized version of the film. The Lanham Act, however, already affords a full remedy for instances in which the film distributor leaves the public with the misleading impression that a director or actor was associated with, or approved, the creation of the colorized version of the film.

Section 43(a) of the statute provides:

> Any person who shall . . . use in connection with any goods or services . . . a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same . . . shall be liable to a civil action by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

This statute is remedial in nature and has been construed broadly, even where no registered trademark is involved.[7] The act protects against false impressions as well as against literal falsehoods.[8]

In Gilliam v. American Broadcasting Cos., 538 F.2d 14 (2d Cir. 1976), the Second Circuit Court of Appeals ruled that attribution to the original authors of a television program that had been significantly altered created a false impression of the product's origin, in violation of section 43(a). See

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[7] See, e.g., L'Aiglon Apparel, Inc. v. Lana Lobell, Inc., 214 F.2d 649, 651 (3d Cir. 1954); Loctite Corp. v. National Starch & Chem. Co., 516 F. Supp. 190, 216 (S.D.N.Y. 1981).

[8] Wildlife Internationale, Inc. v. Clements, 591 F. Supp. 1542 (S.D. Ohio 1984).

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also Follett v. New American Library, Inc. 497 F. Supp. 304 (S.D.N.Y. 1980) (promotional materials created a false impression about the contents of a book and author's contribution to it); Wildlife Internationale, Inc. v. Clements, 591 F. Supp. 1542 (S.D. Ohio 1984) (advertisement and packaging of low-quality prints of an artist's early work created a false impression that the works met his current standards and had received his approval). Accordingly, directors and actors may rely, if appropriate, on the provisions of the Lanham Act to ensure that the public is not misled regarding their contributions to the colorized versions of films. No additional legislation is necessary to compel more burdensome disclosures.

E. In Sensitive First Amendment Areas, Voluntary Compliance Standards More Effectively Promote Public Interest Goals Than Do Government Mandates.

In general, the blunderbuss approach represented by the legislative proposals discussed above is misguided. There is no doubt that restrictions on colorization implicate the First Amendment rights of film owners and distributors. In those rare instances where unfettered exercise of rights of speech conflicts with some other policy goal, the traditional and preferred approach has been to rely on voluntary standards. For example, the Motion Picture Association of America subscribes to a rating system that notifies viewers in advance

of the level of profanity, sex and violence in a motion picture. The advantage of such standards is that they directly address the problem while avoiding the heavy hand of government regulation. Voluntary standards can be adjusted more easily in response to changing social or economic conditions, and they are controlled by the parties most closely attuned to public attitudes, needs and perceptions.

In the colorization area also, voluntary compliance standards would effectively address any public policy problem that is perceived to exist. If the concern is that the public will be misled as to the nature or source of colorized films, the film industry could develop a voluntary labeling standard, similar to that which Turner already has decided to adopt, which would ensure that each colorized film is plainly identified as such. The industry is in the best position to identify both the problem and the most appropriate solution. Even legislation enacted with the best of intentions, however, would lack the fine-tuned approach needed to avoid treading on delicate First Amendment rights.

Conclusion

The key issue in the colorization debate is not whether the nation's black and white films should be saved. Because of the preservation efforts of Turner and others -- and the general economic value of preservation, as proved by the

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emergence of new markets over the years -- original features will always be available for future generations to enjoy. The issue is whether the government should be allowed to compel 220 million citizens to acquiesce in the arbitrary artistic judgments of a few individuals. We believe that the question answers itself. No further action on colorization by the Copyright Office is necessary or appropriate.

Respectfully submitted,

Charles D. Ferris
Bruce D. Sokler
Terrence J. Leahy
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006
(202) 293-0500

Bertram W. Carp
Nell Payne
Turner Broadcasting System, Inc.
111 Massachusetts Avenue, N.W.
Washington, D.C. 20001

August 24, 1988

EXHIBIT A

The titles listed below are those that Turner has already color converted:

Yankee Doodle Dandy
The Maltese Falcon
42nd Street
Dark Victory
Sea Hawk
Captain Blood
White Heat
The Prince and the Pauper
Charge of the Light Brigade
Fighting 89th
Roaring 20s
San Francisco
Father of the Bride
Fastest Gun Alive
Christmas Carol
Stratton Story
Across the Pacific
Asphalt Jungle
Destination Tokyo
The Gazebo
Adam's Rib
Action in the North Atlantic
Carbine Williams
Bataan
Boomtown
They Died with Their Boots On
They Were Expendable
Catered Affair
The Postman Always Rings Twice
They Drive By Night
Arsenic and Old Lace
Casablanca
Dr. Jekyll and Mr. Hyde
The Americanization of Emily
High Sierra
The Philadelphia Story
Key Largo

Titles now in progress are:

David Copperfield
Knute Rockne
Westward the Women
The Hunchback of Notre Dame
Somebody Up There Likes Me
30 Seconds Over Tokyo
The Bachelor and the Bobby Soxer
Command Decision
King Kong

Titles to be color converted for 1989 are:

Gunga Din
The Adventures of Huckleberry Finn
The Big Sleep
Ãll Fall Down
Might Joe Young
Suspicion
Captains Courageous
Treasure Island
Mutiny on the Bounty
Angels With Dirty Faces
Bringing Up Baby
The Thing
Woman of the Year
Objective Burma
Treasure of the Sierra Madre
Boystown
My Favorite Wife
Out of the Past
Jailhouse Rock
Jezebel
Father's Little Dividend
King's Row
Picture of Dorian Gray
To Have and Have Not
Tall in the Saddle
Christmas in Connecticut

EXHIBIT B

Turner

BROADCASTING SYSTEM, INC.

ONE CNN CENTER

BOX 105366

R. E. TURNER
CHAIRMAN OF THE BOARD

ATLANTA, GEORGIA 30348-5366

NORTH TOWER
(404) 827-1717

June 27, 1988

The Honorable Claude Pepper
Chairman
House Committee on Rules
H-312 Capitol Building
Washington, D.C. 20515

Dear Chairman Pepper:

As you know, the Rules Committee is currently considering whether to waive the House rules to accommodate an amendment concerning color conversion and other material alterations of motion pictures.

We at Turner Broadcasting agree with the testimony of Chairman Rodino and Congressmen Brooks, Kastenmeier and Fish that the issues raised by the Mrazek amendment would benefit from consideration by the Judiciary Committee and Congressman Kastenmeier's Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

To facilitate such consideration, we will voluntarily abide by the following principles:

- We will label both the color-converted videotape and the videocassette box to disclose that the product in question is the color-converted version of a motion picture originally made in black and white and, where applicable, that the original director or cinematographer did not participate in the color conversion.

- We will continue to make the black-and-white version of each color-converted motion picture available for theatrical and television distribution, and where commercially practicable, market videocassettes in black and white as well as color-converted versions.

- We will carefully preserve the black-and-white original of all color-converted motion pictures.

- We will deposit a black-and-white copy of each color-converted motion picture with the Library of Congress.

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I should add that these principles embody or expand policies already in effect at Turner Broadcasting. We hope our action can provide the basis for resolving this controversy.

Sincerely,

Ted Turner

R. E. Turner

cc: The Honorable Peter W. Rodino, Jr.
The Honorable Jack Brooks
The Honorable Robert W. Kastenmeier
The Honorable Hamilton Fish, Jr.
Identical letters sent to
Members of the House Committee On Rules

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MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966

OFFICE OF REGISTER
OF COPYRIGHTS
AUG 24 1988
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Comment Letter
RM 88-3
No. 5

STATEMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

SUBMITTED TO THE UNITED STATES COPYRIGHT OFFICE

IN DOCKET RM 88-3

REGARDING NEW TECHNOLOGY AND AUDIOVISUAL WORKS

AUGUST 24, 1988

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CONTENTS

TAB	
A	Statement of Peter Nolan, Vice President-Counsel, The Walt Disney Company
B	Statement of J. Nicholas Counter III, President, Alliance of Motion Picture and Television Producers
C	Appendix: Panning-and-Scanning, Time Compression and Time Expansion: How They Work, and Why They Are Utilized

Statement of Peter Nolan

Mr. Register, my name is Peter Nolan. I am Vice President - Counsel of the Walt Disney Company. I am speaking to you today on behalf of both the Motion Picture Association of America (MPAA)[1] and Disney.

At the outset, Mr. Register, I would like to thank you and your colleagues for granting me the opportunity to appear here today in response to the Copyright Office's Notice of May 25, 1988 announcing an inquiry and hearing on the interrelationship between what the Office refers to as "new technologies," including colorization, time compression and panning-and-scanning,[2] and motion pictures.

We understand that the fundamental issue facing the Copyright Office is whether it should recommend to Congress the enactment of federal "moral rights" legislation applicable to motion picture and television production. Film directors have urged Congress to make such a recommendation, complaining that these "new technologies" compromise the integrity of their filmmaking.

Mr. Register, we, along with many other copyright owners and

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[1] The members of MPAA are: Columbia Pictures Entertainment; MGM/UA Communications Co.; Orion Pictures Corporation; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Universal City Studios; The Walt Disney Company; and Warner Bros. Inc.

[2] In its Notice, the Copyright Office specifically refers to colorization, time compression, and panning-and-scanning. Because the Copyright Office will hear directly from those involved in the colorizing of black-and white films, to the extent these comments are descriptive of "new technologies," they will focus primarily on panning-and-scanning and time compression.

users in other areas of business, vigorously disagree with the directors' position and oppose the enactment of "moral rights" legislation.

In our view, "moral rights" legislation, such as H.R. 2400, the "Film Integrity Act of 1987," is neither necessary nor appropriate for a variety of reasons that my colleague, Mr. Counter, and I will discuss today.

We believe that when the Copyright Office completes its inquiry it will reach the same conclusion and take the position that copyright owners should be free to continue to employ technologies without being subject to legislatively-sanctioned interference by non-copyright owners.

The New Technologies Are Tools of Value To Society

Mr. Register, panning-and-scanning and time compression are tools of value to society. They permit producers to make their products available to vast numbers of people through an ever-increasing array of delivery systems, and by so doing fulfill the underlying goals of the Copyright Act by promoting the creation of new works and, perhaps even more importantly, disseminating those works as widely as possible to our citizens.

Today, motion pictures are delivered to the consumer through an expanding range of transmission media -- from movie theaters and free broadcast television to basic and pay cable, pay-per-view, videocassettes, MMDS, satellite receive-only earth stations, etc.

Our works must be adapted to meet the particular needs of each of these delivery systems. The technologies under discussion today allow for those adaptations to take place and expand public access to copyrighted works.3/

I would like to offer a brief description of the techniques of panning-and-scanning and time compression and expansion. A more technical description of these processes is appended to my statement.

The technologies under discussion are essential to the process of transferring motion pictures to videotape for use in various markets.

Some of the MPAA member companies use their own on-premises equipment for these film-to-tape transfers; others use expert, highly-respected video transfer houses. Regardless of where this work is done, our companies ensure that state-of-the-art equipment is used to produce the highest-quality product possible.

Panning-and-Scanning

When a motion picture is created for theatrical release, the dimensions of the image are those of the typical theatre screen. Theatre screens have a wide "aspect ratio": that is, the screen is approximately two to three times as wide as it is high.

By contrast, when standards for broadcast television were developed in the '40s and '50s, they called for an image with a

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3/ Colorization also helps to enhance the array of products available to the public. It permits films that would otherwise moulder in dark vaults to live again on the nation's TV screens.

different aspect ratio, now established at 1.33:1. The television industry standard also applies to transmissions received via cable and other media, and to the display of videocassette and videodisc-generated images.

As a result, any time a theatrical motion picture is to be exhibited on a television screen, there is a need to reconcile these differences. In the early days of television, broadcasters tried various means of "squeezing" the motion picture image onto the home screen. None of these was satisfactory. In time, panning-and-scanning technology was developed. Panning-and-scanning has become the clearly-preferred way of bringing about this reconciliation.

Through the panning-and-scanning process, the motion picture image is adapted so that the entire television screen is filled with a visual image.

Time Compression and Expansion

Time compression and expansion facilitate the airing of our films and TV shows on commercial TV by adapting the motion picture to the strict time constraints of television, and to permit the insertion of commercial announcements.4/

In the absence of time compression techniques, it would be necessary to eliminate more footage from the original version of

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4/ Time compression is used little, if at all, outside of commercial broadcast television. Motion pictures shown on premium cable services or on videocassettes are rarely time-compressed or time-expanded. Our company does not time-compress at all for the videocassette market. On occasion, we understand, some companies use time compression to conform a motion picture to the fixed playing time of videodiscs.

the motion picture to meet the requirements of broadcast TV. Time compression permits us to retain as much of the original footage as possible.

The studios and transfer houses take great care in employing time compression and expansion. They are careful to work within acceptable limits of these techniques so as to make sure that there are no effects on the video or audio discernible to the viewer.

Obviously, these new technologies permit us to reach markets and individuals, both here and abroad, that might not otherwise be served. They allow us to provide viewers with diverse viewing options.

If, however, these and future valuable technologies were suddenly unavailable, or if our use of them were hamstrung by legislatively-imposed "moral rights," our ability to achieve these pro-consumer results would suffer as well.

I must stress the importance of the non-theatrical markets to the well-being of our industry. If we can't reach these markets, then the U.S. motion picture and television business, the pre-eminent entertainment industry in the world, will be grievously wounded.

This is is so because ours is a high-risk, high-cost enterprise. According to the MPAA, the average cost of producing a feature film for an MPAA member company is now over $20 million, up 113% since 1980. Add to that the $9 million (on the average) that MPAA members spend in advertising and print costs.

It is a fact that most motion pictures produced by MPAA

member companies don't make a profit from their world-wide theatrical exhibition. Only through revenues from non-theatrical sources here and abroad, including the free TV, cable TV, and home video markets, are MPAA members able to reduce their losses with respect to some films and recoup their costs as to others. In any event, it is estimated that two-thirds of MPAA member company films never recoup their costs!

In order to improve the odds of financial success, the copyright owners must have the freedom to adapt their productions to the differing needs of various markets. If legislation were enacted that called into question the copyright owner's ability to do that,[5/] the widespread performance of their products so essential to recoupment of these huge investments would be seriously jeopardized.

Mr. Register, the film directors should not be too quick to condemn each new development on the technological front. Not only do technologies (panning-and-scanning and time compression/expansion) enable us to make our products widely available to consumers, but technological processes also enhance the abil-

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5/ Bills such as H.R. 2400 would not only call into question the use of those technologies alluded to in the Copyright Office notice, particularly panning-and-scanning and time compression. Such legislation would also pose a real threat to other techniques employed to meet the special needs of certain markets. For example, as discussed below, these proposals could affect decisions regarding: (1) dubbing or subtitling or films to make them marketable both here and abroad; (2) editing a film for airing on free TV to comport with standards and practices; and (3) adapting films to meet the many and varied requirements of foreign markets, each of which often imposes its own censorship laws.

ity of our members to better preserve motion pictures and television shows and to enhance viewer enjoyment in many ways.6/

First, the transfer of a movie from film to videotape has dramatically improved our ability to preserve and restore clarity and color to the final product, and to improve sound as well.

Through the process of color correction, the colors that originally appeared in a now-deteriorating film negative can be restored to their original lustre in the video version. This process is also capable of ensuring that the colors of various objects are consistent from scene-to-scene.

In addition, advanced sound enhancement technologies improve the home viewer's enjoyment of motion pictures. Today it is common practice to issue videocassette versions of films with immensely improved sound. Video dealers' shelves are replete with cassettes that employ VHS Hi-Fi and Beta Hi-Fi soundtracks. Some studios are also going back into their libraries and adding stereo soundtracks to old TV shows with monophonic tracks.

Aside from videotape, laser discs have brought unparallelled picture and sound quality onto the home TV screen.

Second, S-VHS and High Definition Television have the potential to revolutionize our viewing habits by greatly improving the quality of pictures that can be received on

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6/ Colorization also serves to promote the preservation and restoration of black-and-white films. It does so without in any way disturbing, maiming, or contaminating the negative of the black-and-white original; in fact, the black-and-white negative is unchanged, or in many cases is restored and improved as an integral step leading to the colorization process.

television sets in our homes.

The advances made possible by technological change are valued by our member companies. We are very conscious of the importance of preserving and enhancing our film and TV libraries. Obviously, it makes good business sense for us to ensure that our products are both kept in the best possible condition and available in a form most appealing to consumers. We know that viewers will not demand to see motion pictures, no matter how popular they once were, if we deliver inferior versions.

This is a real concern at Disney and other MPAA member companies. At Disney, as you know, we periodically reissue films, including our classic full-length films as well as our animated short subjects, so that new generations of children can be introduced to them. Bambi, Cinderella and Snow White are recent examples of our painstaking efforts to restore our film images to their pristine form. I suspect that those of you who may have seen these films or their accompanying trailers were impressed by the wonderful quality of the prints.

The Legislative Front

We are witnessing an escalating campaign to introduce the concept of "moral rights" into federal law, especially the Copyright Act. At the forefront of this effort has been the Directors Guild of America (DGA).

Congress is close to taking the unprecedented and controversial step of creating a National Film Preservation Board with

broad powers, including the authority to require that labels be affixed to certain motion pictures that have been "materially altered."

The creation of the film board was championed by the DGA. Ultimately, MPAA did not oppose the legislation. But that decision was simply based on political realities. Had we not sat down and worked with the legislation's proponents, a far worse system might have been inflicted on our industry, one that did even more violence to copyright and first amendment principles than did the final product.

The directors have made clear that they don't want to stop with the film board. They've made it known that they want more than a federal law requiring the labeling of motion pictures. The DGA has announced that what they're really after is H.R. 2400. By doing so, the directors have expressed their commitment to seek "moral rights" legislation that would give them both enormous control over how a copyright owner exploits his property and what the public may and may not see.

Let me explain briefly why MPAA opposes legislation like this. Then I will conclude my remarks by pointing out some of the many fundamental flaws in H.R. 2400.

Today products of the American motion picture and television industry are coveted throughout the world. Our industry has achieved that enviable position, in large part, because our Copyright Act gives film producers, who have made enormous investments in their product, control over the exploitation of their works.

In effect, our law recognizes that those who take enormous risks in the making of a film should have the right to market that motion picture in a way best suited to their achieving a return on their investment.

"Moral rights" legislation would give non-copyright owners -- who do not share our financial risks -- tremendous influence over how and where a film would be marketed. It would dilute the producer's ability to make a profit or at least attempt to recoup his investment; it would diminish the attractiveness of the motion picture as an investment property. It would result in constricted availability of film and television material to the public. In the end, it would undercut the underlying goals of the Copyright Act: to promote the creation of both new works and broad public access to such works. Such a result is anti-creativity; it is anti-consumer.

More than that, by giving non-copyright owners the right to control decisions fundamental to the marketing of motion pictures, this legislation would also invest directors with enormous power over what the public may and may not see. In our democratic society, such decisions should be left to the marketplace. They should not be granted by Congress to anyone. To do so smacks of censorship. Rather, the public should remain free to accept or reject particular adaptations of films.

In addition, as Mr. Counter describes in his prepared remarks, such legislation would have a profound effect on the business relationships between directors and producers as set forth in both guild agreements and individual employment

contracts. It would unfairly thrust the federal government into these private-relationships on the side of the directors.

Now I will share just a few reasons why the motion picture and television production community is so alarmed by H.R. 2400.

I don't think my observations will come as any surprise, Mr. Register, given your own serious reservations about this proposal and the skepticism with which it was greeted at the recent hearing before the House Subcommittee on Courts, Civil Liberties and the Administration of Justice.

First, the bill raises many troubling questions. It answers virtually none.

For example, what does the bill really cover?

H.R. 2400 empowers the artistic authors, defined as the principal director and principal screenwriter, to object to any material alteration in a motion picture. It speaks of "material alterations, including colorization," but fails to define "material alterations."

Does this include mandatory changes to comply with foreign censorship laws? Does it include dubbing and subtitling for foreign markets? Does it include alterations designed to preserve motion pictures that might otherwise cease to exist? Does this reach editing intended to make the film suitable for free TV -- the sole or primary access that millions of Americans have to motion pictures? Does it include editing films to accommodate the insertion of commercials that are essential for their broadcast on free TV? What about the film-to-tape transfer process that every TV series and every movie shot on film must go

through to be seen on the home screen?

Put another way, what types of changes does it not reach?

Here's another fundamental question. Who decides who was the "principal director" and the "principal screenwriter," particularly for the tens of thousands of films already produced? What happens if the principal director agrees with the proposed changes but the principal screenwriter objects?

And what do you do when, as is often the case, several screenwriters contribute to the script and one of the writers who only wrote, say, 15% of the final version, fills in the missing piece that makes the film work? Should that person be deemed the principal screenwriter?

Ultimately no amount of legislative tinkering can resolve these difficult questions, so numerous that we cannot even anticipate them all. The answers will only come from the federal courts, after years of time-consuming and expensive litigation that would inject uncertainty into the marketplace and that could deny films and TV programs to consumers. Is this the kind of dispute that should be burdening our judiciary and withholding entertainment from audiences?

Second, we are deeply concerned with the fundamental changes H.R. 2400 would work on the Copyright Act.

The proposal stands the Copyright Act on its head by endowing non-copyright owners with rights generally reserved for copyright owners. It permits non-copyright owners to sue copyright owners who modify a movie without the written consent of the so-called "artistic authors."

The bill also takes the extraordinary step of denying copyright status to a motion picture that is altered without the consent of the "artistic author." Thus, not only can the producer be sued as if he were a copyright infringer, he is also denied the ability to exploit his work!

Also worrisome is the fact that the right of consent afforded "artistic authors" outlives the life of the copyright in the underlying motion picture. This raises an intriguing constitutional question. Given the constitutionally-limited term of copyright, how can Congress amend the Copyright Act to grant rights that exist in perpetuity? Even if Congress has such power, is it good public policy to use it here?

Conclusion

Mr. Register, the relentless advance of technology constantly poses new questions for copyright experts. Many of these technologies threaten fundamental principles of copyright, such as new equipment that facilitates duplication of copyrighted works without the authority of the rights owners. Other technologies further fundamental principles of copyright by expanding consumer access to creative works, while at the same time respecting the rights of copyright owners.

That is the line that must be drawn. We urge the Copyright Office and Congress to remain vigilant to this distinction, to discourage the former and encourage the latter. To do so, would be consistent with the Copyright Act and the underlying constitutional grant of copyright.

Statement of J. Nicholas Counter III

Mr. Register, my name is J. Nicholas Counter III. I am the President of the Alliance of Motion Picture and Television Producers (AMPTP).

I am appearing here today representing both the AMPTP and the Motion Picture Association of America, Inc. (MPAA).[1/]

I welcome the opportunity to participate in today's hearing on "new technology" and audiovisual works.

At the outset, Mr. Register, I think it would be helpful if I tell you and your colleagues a little about the AMPTP.

The AMPTP is an organization of companies engaged in the production of motion pictures and television programs.[2/] The purpose of this organization is to negotiate and administer collective bargaining agreements with unions and guilds representing almost all employees who perform services in connection with such motion pictures and television programs.

For more than forty years, the AMPTP and its predecessor

1/ The members of MPAA are: Columbia Pictures Entertainment; MGM/UA Communications Co.; Orion Pictures Corporation; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Universal City Studios Inc.; The Walt Disney Company; and Warner Bros. Inc.

2/ The AMPTP represents a variety of producers of TV programs and motion pictures, such as: Aaron Spelling Productions; The Burbank Studios; Columbia Pictures Entertainment Inc.; Embassy Television, Inc.; Four Star International Inc.; Hanna-Barbera Productions; Lorimar-Telepictures; MGM/UA Communications Co.; MTM Enterprises; Orion Television, Inc.; Paramount Pictures Corp.; Ray Stark Productions; Stephen J. Cannell Productions; Sunrise Productions, Inc; Twentieth Century Fox Film Corp.; Universal City Studios, Inc.; Viacom Productions, Inc.; Walt Disney Pictures Inc.; Warner Bros. Inc.; and Witt/Thomas/Harris Productions.

organizations have negotiated the standard collective bargaining agreements with these unions and guilds, including the Directors Guild of America (DGA), the organization that has been most vocal in the call for the enactment of federal "moral rights" laws in this country.

The standard agreements negotiated by the AMPTP on behalf of its members are generally available to be signed by production companies not affiliated with the AMPTP. In fact, many non-AMPTP member companies are signatories to the standard DGA agreement. In sum, the vast majority of production companies in the United States, upwards of 90%, are signatories to the standard DGA agreement.

Moreover, the overwhelming majority - approximately 95% - of the directors of motion pictures produced in the United States are represented by the DGA.

In its May 25, 1988 Federal Register notice, the Copyright Office raised a number of important questions regarding the relationship between the "new technologies" and the existing collective bargaining and private contractual processes.[3/] In essence, these questions ask whether these current procedures are sufficient or whether federal "moral rights" laws along the lines pro-

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3/ Specifically, the Copyright Office asked: (1) Do existing contractual or collective bargaining agreements govern the nature or extent of the use of the new technologies, and if not, why not? (2) Are there differences in contract provisions negotiated by established creators and those negotiated by lesser-known artists? (3) Is there a need for additional legislation to solve the problems caused by the new technologies or should the private contractual or collective bargaining processes be relied upon? (4) Would additional legislation upset existing contractual relationships?

posed by the DGA are necessary.

Mr. Register, our response to these questions is simple and straightforward.

The existing private contractual and collective bargaining processes are sufficient to deal with issues raised by technological change. It would be unnecessary and unfair for the federal government to intervene in the marketplace by enacting federal "moral rights" legislation.

Let me elaborate.

For decades, the private business relationships between producers and directors have been governed by comprehensive collective bargaining agreements and individual employment contracts.

In their collective bargaining agreements with producers, directors have gained various "moral rights"-type protections -- the same kind of rights that the directors are now asking Congress to legislate on their behalf.

For years, directors have had the right to claim credit for their works. These protections are an integral part of the DGA contract and are set forth in great detail in Article 8 of the current agreement.

Today directors have broad rights to have their names associated with their films. For example, they have the right to have their names prominently displayed when a film is shown theatrically or on videodiscs and videocassettes; [4/] when their

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[4/] Section 8-201 provides, in part, that the director of a theatrical motion picture "shall be accorded credit on all posi-
[Footnote cont'd]

work is advertised;[5/] when formal publicity of the film is released;[6/] and when a record, tape, or book identified with the film is licensed and distributed by the producer and the material mentions the name of anyone else connected with the film.[7/]

Significantly, the DGA agreement goes well beyond the important issue of director credit. Article 7 of the agreement spells out in detail a director's right to be involved in myriad decisions relating to the production and release of a motion picture. As the DGA agreement states:

> The Director's professional function is unique, and requires his or her participation in all creative phases of the film-making process, including but not limited to all creative aspects of sound and picture. ... The Director's function is to contribute to all of the creative elements of a film and to participate in molding and integrating them into one cohesive dramatic and aesthetic whole. [Section 7-101]

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tive prints and all videodiscs/videocassettes of the film in size of type not less than 50% of the size in which the title of the motion picture is displayed or of the largest size in which credit is accorded to any other person, whichever is greater." Similarly, TV directors are given credit on TV films, including the video release of such films. The director's name on the screen shall be no less than 40% of the episode or series title, whichever is larger. [Sections 8-301 and 8-303]

[5/] As a general rule, theatrical film directors are to receive credit on all paid advertising issued or prepared by the employer in the Continental U.S. [Section 8-203] In addition, a producer of a theatrical motion picture is required to submit to the DGA for approval of a director's credit all press books and paid advertising campaign material prepared by the producer. [Section 8-210]

[6/] Theatrical film directors are entitled to have their names on any formal publicity if the name of the picture is mentioned. TV directors have similar protections. [Sections 8-204 and 8-308]

[7/] Section 8-206. The right is available to theatrical film directors where the the employer distributes or licenses for distribution the book, record, or tape.

Article 7 not only deals with the period of time prior to the initial release of a motion picture, but also provides significant protections with respect to adaptations and post-release changes as well.

For example, the Guild agreement affords the director of theatrical motion pictures the first opportunity to edit theatrical motion pictures for exhibition in non-theatrical markets, including network television [Section 7-509(b)]; syndication [Section 7-509(d)]; and domestic home video [Section 7-509(g)].

In addition, the director also has the right to do the shooting if new footage is added either to any theatrical film [Section 7-509(e)] or to a made-for-TV movie destined for foreign TV exhibition [Section 7-510].

Furthermore, the Guild agreement provides that if a rating issued by the motion picture rating system is appealed, the director has the right to fully participate in appeal proceedings; if changes are required to achieve a desired rating, the director has the right to make the changes [Section 7-515].

Significantly, during last year's negotiations, the directors pushed for new protections with respect to the technologies that are the subject of today's hearing: colorization, panning-and-scanning, time compression and time expansion. The producers and directors debated this request along with the many other issues that were also on the table during the negotiations.

Ultimately, the parties agreed to a new provision in the Guild agreement that gives the director the right to be consulted

by the producer with respect to colorization, panning-and-scanning, and time compression and expansion. [Section 7-513]

Also added to the Guild agreement as a result of last year's negotiations is a provision setting up a "creative rights" standing committee composed of equal numbers of producers and directors. This provision, which the directors pushed for, is intended to provide a forum for the airing of concerns regarding Article 7 or 8 of the Guild agreement. In effect, the creation of the committee ensures that there exists an on-going mechanism to address these issues and that such matters are not simply limited to being discussed every three years when the parties return to the bargaining table.

It is essential to note that the DGA agreement represents only the minimum protections afforded directors. Directors are free to and do negotiate greater protections in their individual contracts and can never be made to give up rights protected by the Guild agreement.

As is true in other industries, the more established a director, the greater the leverage he or she has to expand upon the rights in the Guild agreement. Thus, established directors often successfully insist that their individual contracts with producers contain various rights that exceed those in the Guild agreement.

Individual employment contracts may give the director rights above and beyond those found in Articles 7 and 8 the Guild agreement. They may also encompass such things as the choice of cast members, crew (e.g., first assistant director, editor,

principal photographer) and composer. In some instances, these rights even include the "final cut" -- the ultimate determination of the version to be released.

Importantly, Article 2 of the Guild agreement sets up an elaborate, accessible and effective process for dealing with grievances resulting from alleged violations of both the bargaining agreement itself and individual employment contracts.

Mr. Register, we submit that the current system works.

It works because it is fair to both producers and directors and because both these parties are fully capable of looking after their own interests in the negotiating process.

It works because it has proven flexible and responsive. Over the years, the Guild agreements and individual employment contracts have been adapted to meet the new technologies that have continually transformed our industry. This happened when television revolutionized the way that entertainment programs were delivered to the home. The recent inclusion of new protections regarding colorization, time compression, time expansion and panning-and-scanning is another example of the flexibility of the process now in place.

Above all, it works because for more than forty years the producers and directors have conducted their business and settled their differences without Congress jumping in and taking sides.

We believe, however, that if the directors have their way, if federal "moral rights" legislation were enacted, the federal government will be unnecessarily immersed in the marketplace and the established business relationships between directors and

producers will be drastically altered, perhaps irrevocably.

Congress should let this marketplace mechanism continue to operate. It should let these issues continue to be resolved through negotiation, not legislation. It should not step in and declare a winner as to issues better left to private negotiations. We urge the Copyright Office to recommend that Congress not upset the current system and refrain from enacting "moral rights" legislation.

PANNING-AND-SCANNING, TIME COMPRESSION AND TIME EXPANSION: HOW THEY WORK, AND WHY THEY ARE UTILIZED

Panning-and-scanning, time compression and time expansion make it possible to adapt motion picture images to the requirements and restrictions of various non-theatrical exhibition media, particularly broadcast television, cable television and home video. All of these techniques can be applied in the process of transferring the motion picture image from film to tape.

Panning-and-scanning is a process by which motion pictures for theatrical release, which are photographed and exhibited in theatres with "aspect ratio" of 1.85:1 (Academy Standard) or 2.35:1 (CinemaScope)*, are adapted so that they can be exhibited over television, which requires an aspect ratio of 1.33:1.** This is a result of an historical decision arrived at by this nation's engineering community. When the NTSC standard for broadcast television was adopted in the '40s and '50s, it called for an image with an "aspect ratio" different from that of the motion picture screen.*** And, as suggested above, developments

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* That is, the projected image is 1.85 or 2.35 times as wide as it is high.

** The television standard also applies to transmissions received via cable, and to the display of videocassette and videodisc-generated images.

*** The PAL and SECAM standards adopted in Europe also use the 1.33:1 aspect ratio.

in motion picture technology have also resulted in differing aspect ratios for films.

Therefore, if a theatrical motion picture is to be displayed on a television screen, it is necessary to adapt the motion picture image in some way to conform it to the aspect ratio of the television picture tube. That can be done in one of two ways: (1) "shrinking" the motion picture image through the so-called "letterbox" technique, where the motion picture is seen in its original aspect ratio, but a substantial portion of the picture tube above and below the image is "blanked out"; or (2) "panning-and-scanning" the motion picture image, selecting portions of each frame to fill the entire television screen with picture information.

"Panning-and-scanning" is generally the option of choice. Consumers prefer an image that fills the entire television screen over the "wide and short" image, with broad black top and bottom borders, that appear on a "letterboxed" image. Moreover, due to the less-than-ideal picture resolution of the average television set, the clarity of a shrunken "letterboxed" image leaves much to be desired.

It should also be noted that, recognizing the need to adapt films for the important video markets, producers and directors frequently shoot pictures to confine the main screen action to a "safe" area with an aspect ratio roughly equal to that of the television screen. That minimizes any losses in meaningful picture content when the film is transferred to tape for video presentation.

Film-to-tape transfer is undertaken on a "telecine machine," manufactured by such companies as Rank Cintel, Bosch Fernseh and Marconi. A reel of film is threaded through an apparatus that looks like a film projector and onto a take-up reel. A cathode ray tube (CRT) is used as a light source, and projects through the passing film frames. The focal point of the light source which moves across the film frame is called the "raster." The "projected" image then passes through a series of mirrors which divide the picture into red, green and blue components. These color components are picked up by photoelectric cells which transform the photographic image into electronic information, which is then manipulated through computer-controlled electronics.

The "telecine operator" (also known in the trade as a "colorist") sits before a sophisticated bank of electronic equipment. The operator views the image fed from the telecine machine on a high-quality video monitor. In order to determine how the picture should be panned-and-scanned, the telecine operator moves the "raster" across the film image, deciding which portions of each frame should be transferred to video.

In layman's terms, it is possible to think of the moving "raster" as a "camera" that is moved around the film image to capture and accentuate those parts of the image that will be most effective in the video version of the film. The increased sophistication of computer electronics now permits the telecine operator to make both linear and non-linear moves across the film image. Thus, the telecine operator can vary the speed with which

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the "camera" pans across the image, and can raise and lower the image in virtually any direction. Moreover, by using a device called an "x-y zoom," the telecine operator can zero in on specific features on the film image and accentuate them in the video version.

Time compression and expansion is a process whereby motion pictures are adapted to the requirements and restrictions of certain video markets. These adaptations are also accomplished using the telecine machine.

Airlines and television broadcasters are major users of motion picture product. Both of these user groups operate under certain time constraints. Airlines must show motion pictures that fit conveniently into the travel time not allocated for meal and beverage service and other amenities. Television broadcasters need motion pictures that will fit into designated time slots (usually measured in 30-minute increments) with time allotted for the carriage of commercial announcements.

Other video media, such as premium cable services (e.g., HBO and Showtime), videocassettes and videodiscs, are generally not subject to these time constraints, and it is rarely necessary to modify running time of a film for these media.

Time compression and expansion permit copyright owners to adapt motion pictures of varying lengths to the requirements of these markets. Were these techniques not available, many films might not be exhibited at all in these markets.

Significantly, the techniques may eliminate or drastically reduce the need to actually delete or add footage to the video

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version of a film, since the desired running time can be achieved using the images which appeared in the original film version.

Compression or expansion are accomplished by changing the rate at which the film frame runs past the "raster." Today's telecine equipment permits speed changes that are measured in hundredths of a frame per second, permitting precise changes in timing of the motion picture. Compression and expansion are accomplished so that no change is discernible to the naked eye.

By ascertaining the running time needed for the video version of a feature film and applying a mathematical formula, the telecine operator can determine whether an entire motion picture or selected portions should be expanded or compressed. Motion pictures can be compressed or expanded by up to 6 to 7 percent with no effect on viewer perception of the work, although a 2 to 3 percent change in speed would be the average. Time-base correction devices are used to interpolate picture information, thereby avoiding "jerking" or other defects in the video image.

A 1-to-2 percent change in the speed of the film has no noticeable effect in the pitch of the audio. If the speed change is greater, it becomes necessary to adjust the pitch of the sound to eliminate the "chipmunk effect" or "slo-mo effect." This is accomplished by running the sound levels through an audio pitch changer (manufactured by companies such as Lexicon or Eventime) which makes the necessary adjustments automatically when it is instructed what the original film rate is (in frames per second) and what the new film rate is.

The telecine operator also carries out <u>other processes</u> that

improve the transferred image. Through the process of "color correction," the telecine operator can enhance, clean up, or fix the image. Color correction allows the telecine operator to restore to the video version of a motion picture the original colors that have faded in a now-deteriorating film negative, or ensure that the colors of various objects are precisely consistent from scene-to-scene. By storing still images from one or more scenes in the computer memory bank of the telecine equipment, the telecine operator has a handy reference to ensure that colors are corrected within a scene and between scenes. (Some color correction technologies are described below.)

Through other processes, known as "video sweetening," the telecine operator can adapt the film image to be more "acceptable" on the television screen by compensating for the reduced dynamic range of videotape. This is done by separating out the luminance (brightness) and chrominance (hue) information of the picture and adjusting each as needed.

The film-to-tape conversion process for a standard feature-length (approximately two-hour) film, including panning-and-scanning, time adjustments and color correction, usually takes 40-65 hours of a telecine operator's time.

Telecine operators pick up much of their training on-the-job. They generally come from technical or engineering backgrounds, often with film school or art school training.

It bears mentioning that panning-and-scanning, time compression and expansion, and a variety of other technologies are frequently used today when television series that are

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originally shot on film are edited and transferred to video for initial broadcast exhibition. Any material shot on film must be panned-and-scanned to some extent. Time adjustment techniques are often used by program producers in the preparation of a TV series for its initial exhibition, to permit the retention of desired film footage in the final product, and to adjust the final product to the running time contracted for with the broadcaster.

A number of other "new technologies" are used in the film-to-tape transfer process. Some of these technologies are used almost exclusively in the process of editing the work for its initial exhibition*, rather than in adapting a pre-existing motion picture to the requirements of other media. These technologies include:

• Ultimatte (TM), a process which permits the melding into a single image of two video images shot independently of one another (e.g., a foreground shot with a background shot);

• Paintbox, which permits frame-by-frame modification of the content of an image. This can be used to correct an image when the original source material is faulty (e.g., where damage to frames in the film source requires corrections to the video version). It can also be used to make changes in the actual image. For example, a film owner can use this technique to

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* For example, many television series are shot on film and transferred to videotape for editing. The technologies described below are most often used to add special effects to the videotape version of the work that would be impossible or too expensive to accomplish using film techniques.

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eliminate the appearance of the logo of a particular airline on a plane in a scene of a film, in order to facilitate the licensing of the film to other airlines;

° Dubner (TM) and DaVinci (TM) are color correction technologies. They can be used, for example, to change the color of an object in a given area of the frame. This technique can be used, for example, to match the color of an actor's clothing as it appears in some older footage and as it appears in newly-shot footage.

* * *

Panning-and-scanning, time compression and time expansion are all means of adapting theatrical motion pictures to various video media in ways that meet marketplace needs. They permit producers to bridge the differences between film and video to deliver to consumers the best possible product. They are merely the tools which, though rather novel today, are part of the continuing development of technologies used in the craft of filmmaking.

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RM 88-9
Comment Letter
No. 6

August 24, 1988

William F. Patry
Policy Planning Advisor
Office of the Register
United States Copyright Office
Room LM-403
James Madison Memorial Bldg.
First and Independence Ave., S.E.
Washington, D.C. 20559

Dear Mr. Patry:

I am enclosing herewith a letter constituting a statement of Qintex Entertainment Inc. for inclusion in the record in RM66-3 "Request for Information: Notice of Hearing, New Technology and Audiovisual Works." This statement is submitted by Rob Word, Senior Vice President, Marketing, and a corporate officer of Qintex Entertainment Inc. This is also to confirm that Mr. Word will attend the hearing on September 8, 1988, at the Copyright Office and will participate in a panel answering questions about his statement. We would appreciate any information you can supply as to the scheduling of Mr. Word's appearance at the hearing.

Very truly yours,

Grover C. Cooper

GCC/jdb
Enclosure



August 23, 1988

United States Copyright Office
c/o Grover C. Cooper, Esq.
Fisher, Wayland, Cooper and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037-1125

Dear Sirs:

Colorization, Inc., a subsidiary of Qintex Entertainment Inc., is one of only three companies which is equipped to produce colorized films. Over 40 films have been colorized to date. Colorization, Inc. takes credit for 18 of these fine works which Qintex Entertainment distributes. All 18 of these restored and colorized films have enjoyed great success in the USA and abroad through television syndication and home video.

Through the process of Colorization™ Qintex Entertainment Inc. has succeeded in introducing black and white classic films to an entirely new audience and a new generation. The magical stories and the wonderful performances have been enhanced and modernized for modern societies throughout the world.

"Colorization" is our process by which color information is tastefully and realistically imposed upon an existing black and white video signal. The process of Colorization was introduced in the mid-1970's and became economically viable in 1985 when computer technology interfaced with specialized video processing equipment.

Before the actual process of Colorization begins, the original film must be restored and then recorded on video tape. The art director "colorizes" the first frame using an electronic palette to color the film, and the computer performs its functions as it moves the color information following the painting of the first frame, through interpolation with the software, just as the black and white tones moved in the original material. The experienced

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technician/art director monitors the colorization process to insure accurate and pure color registration. This entire process is then repeated for each new scene. Each minute of colorized film runs a cost of approximately $4,000. An average 120-minute feature film requires $480,000, several months, and approxiamtely 100 employees to produce.

We at Qintex Entertainment are proud of the success of our colorized films both in television syndication and home video release. In its colorized version, the classic American Christmas story, "It's A Wonderful Life," starring James Stewart, garnered a national rating of 9.9 in television syndication. A well-known and respected American film critic, Rex Reed of the New York Times, said, "This is a movie that should always have been in color. Any movie with a Christmas tree should be in color." In the Christmas season of 1987, over 200,000 copies of the colorized version of "It's A Wonderful Life" were sold while less than 60,000 units were sold in black and white. Another tremendously successful colorized film, "Topper," starring Cary Grant, earned a national rating of 9.7 and personal approval from Mr. Grant himself who stated in a letter that the Colorization was "faithful to the original colours of the sets, costumes and countryside."

Panning-and-scanning is a process needed to make films produced in the wide screen format fit on the relatively square television screen. In the past, wide screen films were almost unwatchable on the TV screen because the composition for the wide screen sometimes placed the main characters outside the TV screen's smaller dimensions.

Prior to 1953, the ratio of the motion picture screen to the TV screen was the same. Most of the films being colorized, are the older black and white films of the 1930's and 1940's and have no need to be panned and scanned. For wide screen films like "Advise and Consent," decisions must be made almost frame by frame to decide what is the most important image. If not for this selection, viewers sometimes end up seeing only noses talking to one another as the performer's bodies are off screen. If done properly, panning and scanning improves the television broadcast of wide screen movies. Producers and/or directors are generally accorded an opportunity to become involved in the video transfer of their film.

Proper panning and scanning makes the film more enjoyable for the viewer and less distracting than simply having "off screen" voices being heard when originally they were on screen (albeit a larger screen). There have been advances in adapting television sets to wide screen to change the format and ratio of the

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television screen but to make the current ratio and size of TV screens obsolete would pose a tremendous economic burden and confusion upon the public. Naturally, when the films are screened in the proper ratio on a large movie screen in reissues, they do not need to be adapted as they do when released on video for TV, cable or videocassette sale and rental.

As far as the "desecration" of films being adapted to home video or television broadcast is concerned, I think most rational people are well beyond the misunderstanding and miscommunication fostered by the radical groups when Colorization was first brought to the market. Most people are now aware that the films are actually preserved on videotape and when broadcast in color on color monitors, they realize that the original has been preserved on film and is actually available for screening on color TV sets by merely taking the color, hue and chroma out of their monitor making black and white pictures possible.

New technologies enhance rather than detract from older product. It makes it available and accessible to new generations. Our Company is currently colorizing the classic black and white situation comedy "McHale's Navy" for Fall 1989 syndication. Originally we were distributing and colorizing this little seen (today) series for 1991. But, the demand generated by our colorized presentation of clips from the series has caused us to make available this program for Fall of 1989. We would not have sped up our production schedule had not the demand been so great. It is clearly an example of colorizing something that had little value and little chance to be seen by the public and now making it available so that the wonderful slapstick comedy can be enjoyed by both older and younger viewers.

Another recent example of a technical enhancement of an older product has occurred in the upcoming release of Clint Eastwood's biography of saxaphone legend Charlie Parker entitled "Bird." Original Parker solos were lifted from old videotapes recorded during the 1940's and 1950's, refurbished technically, and rerecorded with a fresh rhythm section-new performers-playing around the fabled sax man's improvisations. The result is remarkable. To quote Eastwood's musical director, Lenny Niehaus, the music sounds "like Bird was in the studio last September."

So, as is obvious, the enhancement of older product to make it appeal to today's greater demands, whether they be better audio, better picture or color, is something that we should strive for rather than suppress.

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Qintex Entertainment, Inc. believes in the technique and artistry of the Colorization process, and we will continue to provide the finest colorized American classics.

Cinematically yours,

Rob Word
Senior Vice President,
Marketing

RW:ejf

cc: David Evans

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ROB WORD, SENIOR VICE PRESIDENT, MARKETING

CORPORATE OFFICER, QINTEX ENTERTAINMENT, INC.

Rob Word, Senior Vice President, Marketing, Qintex Entertainment, Inc. is a graduate of Stetson University. He began his career as host and programmer of WFTV, Orlando's classic movie series, "Night Owl Theater," and, simultaneously, worked as a news producer and cameraman for that same station, and for six years had a syndicated print column and syndicated radio program called "Focus on Film."

In late 1978, he moved to Los Angeles, where he helped create the syndicated TV program, "Face the Music." The experience in the area of syndicated TV programming led to a position at the syndicated television division of Orion Pictures (then called Filmways), for whom he served as Director of Marketing for six years. At Orion, Mr. Word's responsibilities encompassed all marketing activities for the film's syndicated television properties and the selection, for TV syndication and home video, of feature films from the company's extensive motion picture library.

At Qintex, Mr. Word is responsible for the marketing and production activities pertaining to the corporation's various interests in the fields of Colorization™, TV syndication (via Hal Roach Telecommunications) and is actively involved as a programming consultant to independent television stations.

Mr. Word is the Executive in Charge of Production on "T & T," the Executive Producer of "The Laurel and Hardy Show," Producer of the syndicated series "Outlaws of the Movies," and Writer/ Producer of the Emmy-nominated special "An Ozzie and Harriet Christmas."

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Comment Letter
RM 88-3
No. 7

OFFICE OF REGISTER OF COPYRIGHTS
OCT 1 1988
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Comments of Professor Peter Jaszi
Washington College of Law, The American University

PUBLIC HEARING ON NEW TECHNOLOGY (COLORIZATION) AND AUDIOVISUAL WORKS
UNITED STATES COPYRIGHT OFFICE
SEPTEMBER 8, 1988

I want to begin with the assumption that there is a "colorization problem," as evidenced by the many expressions of concern about applications of this technology which have been voiced by entertainment industry figures and members of the general public. Overall, there are two related grounds of objection to colorization: The first is that the colorized version of a black and white motion picture may "unfaithful" to that earlier version, or may "distort" its artistic integrity; the second is that the profliferation of colorized motion pictures may effectively restrict the ability of members of public to view the underlying black and white versions.

If such a "colorization problem" exists, regulation of this techology may be appropriate. These comments will not address the ultimate desirabilty of such reguation. Rather, they will take up certain conceptual and technical problems which are like to arise in any effort to devise a regulatory scheme.

THE COPYRIGHT/"AUTHORSHIP" MODEL: SEARCHING FOR THE AUTHOR

. One approach to the regulation of colorization would identify certain participants in the creation of a motion picture as its authors, and would assign to them (and perhaps also to their successors) a right to object to alteration of that work, including (but not necessarily limited to) its colorization. H.R. 2400, the "Film Integrity Act of 1987," was a specific instance of an attempt to implement this general approach. In effect, legislation of this type would create a specialized "moral right" in motion pictures.

The difficulties with this regulatory approach are twofold. Most immediately, attempts to distinguish between those individual participants in the the creation of a motion picture who should be regarded as its "authors" for purposes of the exercise of the new right, and those who do not, will be problematic. Conventional copyright law offers little guidance. Although there is some case law authority for the proposition that under particular circumstances the director a motion picture may be considered its "author" for the purpose of the exercise of certain economic rights, Epoch Producing Corp. v. Killiam Shows, Inc., 522 F.2d 737 (2d Cir. 1975), this cannot said to be a general rule. Indeed, the work-for-hire doctrine, as applied to the process of motion picture production, has made it unnecessary for courts to delve extensively into questions of authorship.

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Nor does the non-legal literature offer much guidance on the quetion of who should be considered the "author" responsible for the artistic character of a motion picture production which leglislation designed to regulate colorization would be intended to protect. One important accomplishment of motion picture scholarship in the past two decades has been to emphasize the importance of the contributions of many different sorts of participants in the process of filmmaking. Clearly, several groups of filmmaking professionals, other than directors, have claims to be considered. Among others, the list would include art directors, cinematographers and film editors. By way of example, a useful discussion of the work of the art director, and the extent to which he or she may be responsible for the "look" of a film (even when its director is a well-known film artist) can be found in Eugene Lourie's My Work in Film (1985); a fascinating discussion of the creative contributions of the cinematographer is provided in One Reel a Week (1967), by Fred J. Balshofer and Arthur C. Miller, particularly in Miller's chapters on the films he shot with John Ford.

The difficulty of assigning authorship is compounded by the fact that participants in filmmaking collaborate in very different ways in the context of different productions. Indeed, the corporate/collaborative nature of the motion picture production process makes the assignment of "authorship" to a particular individual or individuals problematic. A good instance of this problem is the motion picture "Citizen Kane," directed by Orson Welles. Although Welles obviously deserved signficant credit for the film's artistic accomplishments, his contribution cannot easily be disentangled from that of his collaborators, as is detailed in Robert L. Carringer's The Making of "Citizen Kane." Finally, it should be noted that the "look" of many classic American films may be at least as much a function of "studio" culture as is the outcome of the artistic contributions of particular individual participants in their production -- a point argued at length by Ethan Mordden in his recent book The Hollywood Studios: House Style in the Golden Age of Movies (1988).

Neither does foreign law offer any very useful guidance. Those European countries which have considered the question of the authorship of motion pictures have taken divergent approaches. Indeed, it seems fair to say that the record of their efforts does more to point up the problem than to suggest its solution.

Italian law is perhaps the most straightforward, though not necessarily the most satisfactory in its approach to the issue. The copyright law of 1941, as amended, provides (in section 44) that the author of the "subject," the scenario wriiter, the composer of the music, and the "artistic director" shall be considered as co-authors of a cinematographic work. The difficulty of this approach, of course, is that it lacks

flexibilty, and fails to take into account many important contributions to the visual quality of a motion picture.

The French copyright law of 1957 partially avoids these pitfalls by creating (at article 14) a presumption that the authors of an audiovisual work are the author of the script, the author of the adaptation, the author of the dialogue, the author of the musical compositions composed especially for the work, and the director. Where the audiovisual work is based on a preexisting work which is itself protected by copyright, French law provides that the author of that work shall be considered an additional author of the derivative motion picture. But although (as in the Italian statute) many participants if the filmmaking process are not named in this statutory listing, it should be emphasized that its provisions apply only in the absence of proof to the contrary; in effect, the statute assigns the task of determining which participants should be considered to be the authors of a particular motion picture to the courts.

German law goes further in this direction. The Copyright Law of 1965 provides no designation, presumptive or otherwise, of the authors of an audiovisual work, leaving the issue entirely to interpretation. But one authoritative commentator, Dr. Adolph Dietz, is of the opinion that the joint authors of a motion picture would be those whose "contributions cannot be separately exploited, especially the contribution of the director, the cameraman and the cutter. On the other hand, the authors of the preexisting works, including those of the script and the film musch, are not treated as co-authors of the film work." Copyright Law of the Federal Republic of Germany (1983). If Deitz is correct, the actual content of German law on the question would appear to differ significantly from that of both Italian and French law.

THE COPYRIGHT/"AUTHORSHIP" MODEL: CALLING OFF THE SEARCH?

In sum, it will not be easy to determine satisfactorily just who should be considered to be the author of any particular motion picture for purposes of a new "moral right" against alteration, let alone to make such a determination on a general, categorical basis. Moreover, there are reasons to believe that the effort will not be worthwhile.

In 1968, with the publication of Andrew Sarris' The American Cinema, an approach to film criticism based on concepts of authorship, which had been developed by European critics over the previous two decades, came of age in the United States. Conceptually, there is a close relationship between the assumptions of this so-called "auteur criticism," on the one hand, and the premises which would underly any leglislative attempt to give the legal "authors" of motion pictures, however they might be defined, continued authority over the ways in which those films are exploited following their initial release.

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Thus, it is important to note that developments in critical theory since 1968 have called the continued usefulness of the traditional concept of "authorship" into question, at least as a way of understanding how works of creativity (including motion pictures) function to create meaning. Briefly, these new critical approaches cast doubt on whether the creator of a work should be regarded as standing in privileged position vis-a-vis that work once it has been released to an audience. Practitioners of these new approaches (who can be loosely grouped under the label "post-structuralists") argue that once a work (which they would call a "text") passes out of the hands of its creator, he or she can no longer be the arbiter of its meaning and significance. Thereafter, runs the argument, there are as many valid "readings" of a "text" as there are readers. (A somewhat more extensive account of these developments is contained in my article, "Who Cares Who Wrote Shakespeare?," 37 American University Law Review 617, 619-20 [1988]).

The implications for copyright of these developments in critical theory remain to be explored. It seems clear, however, that they may have a real bearing on the question of how, and to what extent, we wish to extend "moral rights" protection to the assumed interests of the "authors." Assuming that we were to embrace the premises of what sometimes is described as "the revolution of the reader" (or even "the death of the author") we might wish to extend some form of protection against alteration to certain works. Thus, for example, we could justify extending such protection to works of fine art which exist in unique copies on the rationale that to allow any particular owner of such a copy to permanently change its form would deny other present and future "readers" access to the "text" in its original form. And for the sake of administrative convenience, we might vest the power to object to such alterations in the original creator.

But on the same assumption, it would be harder to justify taking equivalent action where motion pictures were concerned. For one thing, the colorization of re-editing of a motion picture does not destroy the preexisting version. For another, a commercial motion picture differs significantly from other forms of artistic creation. Geoffrey Nowell-Smith has written that "[t]he production of the film is a kind of assemblage, as a result of which a text emerges which can be realised as use value in the moment of consumption....[T]he product, entering into the sphere of circulation, [need not] be required to be the same object-in-use for all possible consumers." "Six Authors in Pursuit of The Searchers," 17 Screen 26, 32 (1976). Transferring the point from an aesthetic to a legal domain, we might conclude that because a motion picture is designed as a commodity for public consumption, there is no rationale for prohibiting alternations to its form which occur in the process of consumption.

I do not want to suggest that public policy or legal doctrine should be shaped today according to the specific

insights of "post-structuralist" critical theory. I want to urge that policy and doctrine not be made -- explicitly or implicity -- on the basis of critical approaches to thinking about motion pictures which represented the "state of the art" twenty years ago, but increasingly have been overtaken by time. It is noteworthy that even many students of film who do not embrace "poststructuralism" fully have rejected "auteur theory" as a useful way of understanding the motion picture medium. (A particularly interesting attempt to tell the story of American motion pictures with only limited reference to ideas of individual authorship is The Classical Hollywood Cinema: Film Style and Mode of Production to 1960 (1985), by David Bordwell, Janet Staiger and Kristin Thompson.) In contemporary critical perspective, colorization appears as a "problem" not for so much for filmmakers as for members of the motion picture audience. If so, there may be better ways to solve it than by endowing particular filmmaking professionals with the legal identity of "authors" and privileging them to exercise on-going aesthetic control over motion pictures in the making of which they once participated.

"TEXT-CENTERED" APPROACHES TO THE REGULATION OF COLORIZATION

One such solution would be to require those wishing to exploit colorized versions of motion pictures to take some steps to make the black-and-white versions of the same films available to individuals who may wish to view them. The Copyright Office has taken a limited step in this direction in its new deposit rules, announced on August 9, which require anyone wishing to claim copyright in a colorized version to submit, in addition to that version, a copy of the black and white version from which it was prepared. However salutary, however, this measure does not (and was not designed to) guarantee public access to those black and white versions.

In one sense, the amendments to H.R. 4867 adopted by the House of Representatives on June 29, which would have authorized the creation of a National Film Preservation Board, represented a "text-centered," rather than an "author-centered" approach to the "colorization problem." But the measure falls short in several respects. First, the requirement that colorized versions of films included on a "National Film Registry" be labelled as such fails to affirmatively promote public access to underlying black and white versions. Second, the mechanism by which films would be designated for inclusion on the registry would effectively guarantee that what protection the measure would afford would be extended to only a portion of the American film heritage. Justice Holmes' opinion in Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903) reminds us of the difficulties which will ensue whenever an attempt is made to objectify issues of aesthetic quality in the application of a legal rule. Here, the partiular risk would be that the National Film Preservation Board naturally would tend to list accepted "classics" rather than more controversial, or less easily categorized films: It would tend,

in other words, to privilege 1941 version of The Maltese Falcon over the less well-known 1931 version, to say nothing of a film like The Black Cat (1934).

Two more far-reaching "text-centered" solutions to the "colorization problem" may deserve consideration. One would involve the investment of public funds (perhaps derived from special levies on firms and individuals seeking copyright protection for colorized motion pictures) to promote public awareness of the black and white film heritage, and to encourage the screening, televising, and issuing of videocassettes of films in black and white. The other would impose a legal duty on any person exploiting a colorized film commerically to take certain defined steps to promote the availabilty of the related black and white original or, at a mimiumum, to satisfy requests from film exhibitors or videocassette purchasers who seek to view the film in the black and white version.

It may be that neither of these approaches would prove workable. But some consideration of them, and of their advantages relative to other proposed solutions to the "colorization problem," may help to clarify what really is a stake.

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Comment Letter
RM 88-3
No. 9

BEFORE THE UNITED STATES
COPYRIGHT OFFICE

COMMENTS OF THE DIRECTORS GUILD OF AMERICA

Dow, Lohnes & Albertson
1255 Twenty-third Street, N.W.
Washington, D.C. 20037

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BEFORE THE UNITED STATES
COPYRIGHT OFFICE

In re:	)	
	)	
Request for Information, Notice of Hearing, New Technology and Audiovisual Works	)	Docket RM 88-3

COMMENTS OF THE DIRECTORS GUILD
OF AMERICA

On behalf of the Directors Guild of America (DGA), we submit these comments in connection with the above-referenced proceeding.

As the Copyright Office is well aware, the DGA has for the last several years voiced public concern and outrage over the assault on motion pictures by certain vested interests, employing new technologies, such as colorization, time compression and panning and scanning. The great films of the past are being torn apart, colored, speeded up, slowed down, panned and scanned by those who, having obtained legal copyright in the works, feel free to change and market them as they please. They do so in significant part in reliance upon the reputation of the directors, screenwriters, actors and others, who created the films and made them. In the opinion of those creators, this is a wrong which should be redressed.

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In response to the artistic outcry, the DGA, together with the Screen Actors Guild and the Writers Guild of America, in an unprecendented series of public appearances before House and Senate Committees, explained how the directors and others feel about these new technologies. Copies of these eloquent testimonies are attached. They reflect the breadth and concern of some of the foremost thinkers and leaders of the community of film artists.

The following statements are attached:

1. Testimony before Sen. Leahy's Subcommittee on Law and Technology, May 12, 1987:

   a. Woody Allen
   b. Sidney Pollack
   c. Milos Foreman
   d. Elliot Silverstein
   e. Ginger Rogers and letter from James Stewart

2. Testimony before House Subcommittee on Courts, Civil Liberties and the Administration of Justice, Sept. 30, 1987:

   f. Sydney Pollack
   g. DGA
   h. Frank Pierson
   i. Correspondence from prominent international directors

3. Testimony before the Senate Subcommittee on Patents, Copyrights and Trademarks, March 3, 1988:

   j. George Lucas
   k. Steven Spielberg
   l. Bo Goldman
   m. DGA

4. Testimony before the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, June 21, 1988:

n. Arthur Hiller

These statements set out a full public record. The DGA would like to add the following as well to the consideration of the Copyright Office:

o. A video of John Huston's objection to colorization and other assaults on his film, together with a short film entitled Precious Images made by the DGA commemorating 50 years of movies.

p. Videocassette (VHS) material demonstrating the technological practices (to be supplied as soon as possible).

q. A letter from Mr. Frank Capra objecting to colorization of his film, It's A Wonderful Life.

r. The text of the decision of the French Court holding in abeyance public broadcast of the colorized version of The Asphalt Jungle. La Societe D'Exploitation de la Cinquieme Chaine v. Huston, Gen. Index No. 88-11420 (Paris Ct. App. June 25, 1988).

This documentary record addresses the immediate concerns of the Copyright Office. As the agency reflects on the artistic matters raised by the directors and others, it should appreciate that in applying U.S. copyright legal rights apply to American film, there is a third, often neglected player. While the statutory framework defines the

rights of owners and users, the film artist/creator is often omitted. The rights of those creators who are not legal owners have been lost.

Some of the most prestigious and successful directors may, after they have established themselves, achieve certain protections by contract. But for the vast majority of directors, few artistic protections are afforded. And as the directors have explained, these are not matters for collective bargaining; moral rights consistently lie outside the scope of the collective agreements because they affect matters after the employment arrangement is completed. Only legislation of the kind sought by the DGA in their Congressional testimony can rectify this inequity.

As the technologies described in these comments are employed in a vigorous assault on the original, released version of films, the urgent need is for a clear expression of moral rights in US law, consistent with Article 6bis of the Berne Convention. Only this would fairly redress the director's grievances. As the United States moves to become an active member of the Berne Convention, serious, prompt consideration must be given to legislative relief.

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I will be pleased to appear as a witness on behalf of the Director's Guild of America to answer your qustions.

Respectfully submitted,

Directors Guild of America

By _____
Arnold P. Lutzker
Its Counsel

Dated: August 24, 1988
Arnold P. Lutzker, Esq.
Dow, Lohnes and Albertson
1255 23rd Street, N.W.
Washington, D.C. 20016
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DIRECTORS GUILD OF AMERICA

STATEMENT OF WOODY ALLEN

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY

AND THE LAW

OF

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MAY 12, 1987

LET US JUST SAY THAT A VERY RICH MAN HAS PURCHASED ALL THE FILMS EVER MADE IN HOLLYWOOD. HE CALLS TOGETHER HIS STAFF AND SAYS, "TAKE ALL THE BLACK AND WHITE ONES AND TURN THEM INTO COLOR USING OUR NEW COMPUTER." THE TECHNICIANS GET RIGHT TO WORK IMPLEMENTING THIS BECAUSE THEY ARE USED TO FOLLOWING ORDERS. ONE MAN AMONG THEM HOWEVER, IS PUZZLED AND ASKS HIS EMPLOYER, "I DON'T UNDERSTAND -- WHY PAINT THEM OVER WITH COLOR?"

AND THE BOSS SAYS, "BECAUSE MORE PEOPLE WILL WATCH THEM."

"REALLY?" THE UNDERLING ASKS.

"YES" THE BOSS ANSWERS. "THE AMERICAN PUBLIC IS VERY STUPID, VERY INFANTILE. IN FACT THEY'RE IDIOTS. THEY CAN'T ENJOY A FILM UNLESS IT'S FULL OF BRIGHT COLORS AND ROCK MUSIC. THE STORY MEANS NOTHING -- THE PLOT, THE ACTING -- JUST GIVE THE FOOLS REDS AND YELLOWS AND THEY'LL SMILE."

THE WORKER IS CONFUSED AND TELLS HIS BOSS THAT FOR GENERATIONS PEOPLE HAVE BEEN WATCHING AND ADORING FILMS IN BLACK AND WHITE. HE POINTS TO "IT'S A WONDERFUL LIFE" VIEWED BY MILLIONS EVERY CHRISTMAS ON TELEVISION. HE POINTS TO "YANKEE DOODLE DANDY" AND "SERGEANT YORK" AND "CITIZEN KANE" AND "THE MALTESE FALCON" AND "ON THE WATERFRONT".

"THEY'RE GREAT FILMS", THE BOSS SAYS. "BUT I'M GOING TO IMPROVE THEM. THEY'LL BE GREATER WHEN I'M FINISHED WITH THEM."

"BUT THE DIRECTOR OF 'CITIZEN KANE' IS DEAD. WHO'LL TELL YOU WHAT COLORS IT SHOULD BE?"

"WE HAVE MEN TO DO THAT. IT'S TRUE -- THEY'VE NEVER DIRECTED FILMS AND KNOW NOTHING ABOUT IT, BUT THEY SURE CAN WORK COMPUTERS AND BETWEEN YOU AND ME -- DOES IT REALLY MAKE A DIFFERENCE IF JAMES CAGNEY'S JACKET IS GREEN OR YELLOW WHEN HE SHOOTS HUMPHREY BOGART IN "PUBLIC ENEMY?"

THE POOR UNDERLING IS LOSING HIS RESOLVE. "BY THE WAY", HE ASKS, "YOU MENTIONED ADDING ROCK MUSIC?"

"OH, THAT'S IN THE FUTURE", THE BOSS SAYS. "FIRST COLOR, THEN MAYBE WE REPLACE THE SCORE OF 'GONE WITH THE WIND' WITH ROCK. I HAVE LOTS OF IDEAS."

NOW, YOU MIGHT GET THE IMPRESSION FROM ALL THIS THAT I AM AGAINST COLORIZATION OF BLACK AND WHITE FILMS, BUT BELIEVE IT OR NOT YOU'D BE WRONG. IF A MOVIE DIRECTOR WISHES HIS FILM TO BE COLORIZED, THEN I SAY BY ALL MEANS, LET HIM COLOR IT. IF HE PREFERS IT TO REMAIN IN BLACK AND WHITE THEN IT IS SINFUL TO FORCE HIM TO CHANGE IT. IF THE DIRECTOR IS NOT ALIVE AND HIS WORK HAS BEEN HISTORICALLY ESTABLISHED IN BLACK AND WHITE IT SHOULD REMAIN TRUE TO ITS ORIGIN. THE PRESUMPTION THAT THE COLORIZERS ARE DOING HIM A FAVOR AND BETTERING HIS MOVIE IS A TRANSPARENT ATTEMPT TO JUSTIFY THE MUTILATION OF ART FOR A FEW EXTRA DOLLARS.

THE COLORIZERS WILL TELL YOU THAT IT'S PROVEN NO ONE WANTS BLACK AND WHITE BUT THIS IS NOT TRUE AND IF IT WERE -- IF AUDIENCES WHO HAVE GROWN UP ON MINDLESS TELEVISION WERE SO DESENSITIZED THAT A MOVIE LIKE "IT HAPPENED ONE NIGHT" WHICH HAS BEEN DELIGHTING PEOPLE IN BLACK AND WHITE FOR GENERATIONS NOW HAD TO BE VIEWED IN COLOR TO BE APPRECIATED THEN THE TASK WOULD BE TO CULTIVATE THE AUDIENCE BACK TO SOME LEVEL OF MATURITY RATHER THAN TO DOCTOR THE FILM ARTIFICIALLY TO KEEP UP WITH LOWERED TASTES. NOT ONLY DO THE COLORIZERS HAVE CONTEMPT FOR THE AMERICAN PUBLIC BUT ALSO FOR THE ARTIST. A LARGE NUMBER OF AMERICAN MOVIES ARE CLASSICS BOTH AT HOME AND ALL OVER THE WORLD. THINKING THEY WERE MAKING POPULAR ENTERTAINMENT, AMERICAN FILMMAKERS HAVE PRODUCED NUMEROUS

MOTION PICTURES THAT ARE CONSIDERED GENUINE WORKS OF ART COMPARABLE TO FINE LITERATURE, PAINTING AND MUSIC. BUT THE COLORIZERS HAVE NO REGARD FOR THE MEN WHO MADE THESE MOVIES AND WHEN A GREAT AMERICAN DIRECTOR LIKE JOHN HUSTON SAYS HE DOESN'T WANT HIS SUPERB MYSTERY "THE MALTESE FALCON" MADE INTO A COLOR MOVIE BECAUSE THAT MAKES THIS HARD BOILED BOGART FILM SILLY LOOKING: THEY COULDN'T CARE LESS WHAT HUSTON WANTS. THE COLORIZERS ALSO TELL US THAT A VIEWER CAN SIMPLY TURN OFF THE COLOR AND SEE THE FILM IN BLACK AND WHITE. THE FACT THAT THE MAN WHO MADE THE FILM WANTS NO ONE AT ALL TO SEE IT IN COLOR MEANS NOTHING TO THEM. FINALLY, THEY SAY WE LIVE IN A DEMOCRACY AND THE PUBLIC WANTS THESE FILMS IN COLOR BUT IF MEMBERS OF THE PUBLIC HAD THE RIGHT TO DEMAND ALTERATIONS TO SUIT THEIR TASTE THE WORLD WOULD HAVE NO REAL ART. NOTHING WOULD BE SAFE. PICASSO WOULD HAVE BEEN CHANGED YEARS AGO AND JAMES JOYCE AND STRAVINSKY AND THE LIST GOES ON.

THE EXAMPLE OF JOHN HUSTON, INCIDENTALLY, IS PARTICULARLY MEANINGFUL TO ME BECAUSE THE AESTHETIC DIFFERENCES BETWEEN COLOR AND BLACK AND WHITE IS A SUBJECT THAT HITS HOME IN MY OWN WORK. IN AN ERA OF ALMOST EXCLUSIVELY COLOR FILMS, I HAVE CHOSEN ON A NUMBER OF OCCASIONS, EVEN FOUGHT FOR THE PRIVILEGE, OF TELLING STORIES WITH BLACK AND WHITE PHOTOGRAPHY. INDEED THE DIFFERENT EFFECT BETWEEN COLOR AND

BLACK AND WHITE IS OFTEN SO WIDE IT ALTERS THE MEANING OF SCENES. IF I HAD PORTRAYED NEW YORK CITY IN COLOR RATHER THAN BLACK AND WHITE IN MY MOVIE "MANHATTAN", ALL THE NOSTALGIC CONNOTATIONS WOULD HAVE VANISHED. ALL THE EVOCATION OF THE CITY FROM OLD PHOTOGRAPHS AND FILMS WOULD HAVE BEEN IMPOSSIBLE TO ACHIEVE IN GLORIOUS TECHNICOLOR. WHEREAS IF I HAD FILMED "ANNIE HALL" IN BLACK AND WHITE, ALL THE SCENES THAT NOW COME OFF AMUSINGLY WOULD TAKE A GIANT STEP TOWARD GRIM SERIOUSNESS BY MERE VIRTUE OF THEM SUDDENLY BEING GRITTIER AND LESS CARTOONLIKE. ONE HAS ONLY TO THINK OF A FILM LIKE "THE BICYCLE THIEF" AND IMAGINE THE LIFE AND DEATH SEARCH THROUGH POST-WAR ROME FOR THE PRECIOUS BICYCLE BEING IN REDS AND YELLOWS AND BLUES RATHER THAN THE HOT WHITES AND DIRTY BLACKS AND GREYS AND ONE SEES HOW ABSURD THE WHOLE THING IS. AND IT'S NOT JUST DRAMA -- MUSICALS JUST BECAUSE THEY ARE BOUNCY ARE NOT HELPED BY THE ADDITION OF COLOR WHERE IT DOESN'T BELONG EITHER. PART OF THE ARTISTIC EXPERIENCE OF SEEING OLD GINGER ROGERS AND FRED ASTAIRE FILMS IS THE PERIOD QUALITY -- THE BLACK AND WHITE PHOTOGRAPHY GIVES IT ITS ENTIRE FEEL. WHEN ASTAIRE MADE COLOR MUSICALS IN A LATER PERIOD THEY HAVE A TOTALLY DIFFERENT QUALITY THAT REFLECTS BEAUTIFULLY THEIR PARTICULAR ERA. THEY ARE NOT BETTER OR WORSE -- BUT COMPLETELY DIFFERENT AND TRUE TO THEMSELVES.

AND WHAT OF THE OTHER INSULTS -- THE EDITING, THE ARTIFICIAL PANNING, THE CUTS MADE TO ACCOMMODATE THE COMMERCIAL SALE OF DOG FOOD AND ROACH SPRAY. ONLY IN AMERICA ARE FILMS SO DEGRADED. IN OTHER COUNTRIES THE ARTIST IS OFTEN PROTECTED BY THE GOVERNMENT. NO ONE CAN CHANGE A FRENCH FILM DIRECTOR'S FILM WITHOUT HIS CONSENT. THEY HAVE TOO MUCH RESPECT FOR PEOPLE WHO CONTRIBUTE TO THE SOCIETY BY DOING CREATIVE WORK TO ALLOW ANYONE TO SUBVERT THEIR CREATIONS AT RANDOM. MY PERSONAL BELIEF IS OF COURSE THAT NO ONE SHOULD EVER BE ABLE TO TAMPER WITH ANY ARTIST'S WORK IN ANY MEDIUM AGAINST THE ARTIST'S WILL AND THIS PRINCIPLE CAN BE ARGUED JUSTLY BY ANY CITIZEN. IT DOES NOT NEED A DIRECTLY INVOLVED ARTIST.

THE COLORIZERS MAY THINK THEY HAVE A LEGAL LOOPHOLE BUT THE MORALITY OF WHAT THEY ARE DOING IS ATROCIOUS. FOR DIRECTORS WITH ENOUGH CLOUT TO MAKE SELF-PROTECTING CONTRACTS THIS IS NO PROBLEM. BUT FOR THOSE LESS FORTUNATE AND, OF COURSE, THE DECEASED ONES, PROTECTION MUST BE GUARANTEED.

IF A PRODUCER INSISTS ON COLOR AND IF A HELPLESS DIRECTOR IS FORCED TO FILM IT THE STUDIO'S WAY, DESPITE HIS OWN FEELINGS THAT IT SHOULD BE BLACK AND WHITE -- WELL A DEAL'S A DEAL.

BUT ONCE A FILM EXISTS IN BLACK AND WHITE AND HAS BEEN THRILLING AUDIENCES FOR YEARS, THEN TO SUDDENLY COLOR IT SEEMS TOO GREAT AN INSULT -- EVEN FOR A SOCIETY THAT IS SO OFTEN MORE IN AWE OF ITS BUSINESS EXECUTIVES THAN ITS CREATIVE TALENTS.

ULTIMATELY, OF COURSE, THE COLORIZERS WILL LOSE THIS BATTLE. IF IT'S NOT IMMEDIATELY THEN FUTURE GENERATIONS WILL FOR SURE DISCARD THESE CHEESY, ARTIFICIAL SYMBOLS OF ONE SOCIETY'S GREED. THEY WILL, OF COURSE, GO BACK TO THE GREAT ORIGINALS. AND IF WE ARE FOOLISH ENOUGH TO PERMIT THIS MONSTROUS PRACTICE TO CONTINUE ONE CAN EASILY PICTURE YOUNG MEN AND WOMEN SOMEDAY DISCUSSING US WITH DISGUST AND SAYING, "THEY DID THIS AND NOBODY STOPPED THEM?"

"WELL THERE WAS A LOT OF MONEY INVOLVED."

"BUT SURELY THE PEOPLE COULD SEE THE DEEPER VALUE TO AMERICA OF ITS FILM TREASURY, OF ITS IMAGE AMONG CIVILIZATIONS. SURELY THEY UNDERSTAND THE IMMORALITY OF DEFACING AN ARTIST'S WORK AGAINST HIS WILL. DON'T TELL ME IT WAS THE KIND OF NATION THAT ADORED PROFIT AT ANY COST AND HUMILIATION."

HERE I FINISH BECAUSE IT'S TOO EARLY TO KNOW HOW IT TURNS OUT BUT I HOPE DEARLY THAT I WILL NOT BE PART OF A CULTURE THAT IS ONE DAY RIDICULED AND REVILED AS A LAUGHING STOCK.

WOODY ALLEN

Director, Screenwriter

Mr. Allen's motion picture credits include:

"WHAT'S NEW, PUSSYCAT?"	1964: screenwriter, actor
"WHAT'S UP, TIGER LILLY?"	1966: dubbed screenplay of "Kinzino Kisi"
"CASINO ROYALE"	1967: co-screenwriter, actor
"TAKE THE MONEY AND RUN"	1969: director, co-screenwriter, actor
"BANANAS"	1971: director, co-screenwriter, actor
"EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT SEX* BUT WERE AFRAID TO ASK"	1971: director, screenwriter, actor
"PLAY IT AGAIN, SAM"	1971: screenwriter, actor
"SLEEPER"	1973: director, co-screenwriter, actor
"LOVE AND DEATH"	1975: director, screenwriter, actor
"THE FRONT"	1976: actor
"ANNIE HALL"	1977: director, co-screenwriter, actor
"INTERIORS"	1978: director, screenwriter
"MANHATTAN"	1979: director, co-screenwriter, actor
"STARDUST MEMORIES"	1980: director, screenwriter, actor
"A MIDSUMMER NIGHT'S SEX COMEDY"	1982: director, screenwriter, actor
"ZELIG"	1983: director, screenwriter, actor
"BROADWAY DANNY ROSE"	1984: director, screenwriter, actor

more...

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Woody Allen
Filmography

"THE PURPLE ROSE OF CAIRO"	1985: director, screenwriter
"HANNAH AND HER SISTERS"	1986: director, screenwriter, actor
"RADIO DAYS"	1987: director, screenwriter

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DIRECTORS GUILD OF AMERICA

STATEMENT OF SYDNEY POLLACK

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY

AND THE LAW

OF

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MAY 12, 1987

MR. CHAIRMAN, SENATORS:

I'D LIKE TO TAKE A FEW MOMENTS TO SHOW YOU A SHORT PIECE OF FILM PREPARED TO COMMEMORATE THE 50TH ANNIVERSARY OF THE DIRECTORS' GUILD OF AMERICA. SOME OF IT IS IN BLACK AND WHITE AND SOME OF IT IS IN COLOR, BUT FOR THE MOMENT THAT IS IRRELEVENT. IT LASTS ONLY SIX AND ONE-HALF MINUTES AND I PROMISE IT WON'T BORE YOU. IT'S A SMALL PART OF THE LIBRARY OF AMERICAN FILM ART AND IT IS ENTITLED, "PRECIOUS IMAGES".

(FILM RUNS HERE)

IT'S IMPOSSIBLE FOR ME TO WATCH THAT COLLECTION OF PRECIOUS IMAGES WITHOUT A FLOOD OF ASSOCIATIONS OF MY OWN, AND THIS COUNTRY'S, PAST. THE OPERATIVE WORD IN THE TITLE IS

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"PRECIOUS". THESE FILMS ARE A PART OF OUR CULTURAL HISTORY. LIKE ALL ACCURATE REPRESENTATIONS OF WHO AND WHAT WE WERE, THEY DESERVE PRESERVATION IN THEIR AUTHENTIC FORM. LIKE A BUILDING, A PHOTOGRAPH, OR A DOCUMENT IT HELPS LOCATE US IN TIME AND GIVES US A SENSE OF THE GEOGRAPHY OF OUR LIVES. WE NEED AN ACCURATE UNDERSTANDING OF THE PAST IN ORDER TO POINT US ACCURATELY TOWARD THE FUTURE.

I DON'T WANT TO ARGUE HERE THE RELATIVE MERITS OF BLACK AND WHITE VS. COLOR, I BELIEVE OUR PREMISES HERE ARE CLEARER THAN THAT. THE FIRST IS TO PLEAD FOR THE RESPECT THAT ANY CULTURAL HERITAGE DESERVES. THE SECOND IS REALLY QUITE SIMPLE: THAT IT IS MORALLY UNACCEPTABLE TO ALTER THE PRODUCT OF A PERSON'S CREATIVE LIFE WITHOUT THAT PERSON'S PERMISSION. YOU HAVE SEEN A DEMONSTRATION OF A NEW TECHNOLOGY THAT, LIKE ALL TECHNOLOGIES, WILL GET BETTER AND BETTER WITH USE. THE FUNDAMENTAL ISSUE AT HAND IS NOT HOW GOOD IT IS. . .NOT WHETHER OR NOT COLOR IS IPSO-FACTO BETTER THAN BLACK AND WHITE, BUT THAT IT IS NOT IN ANY SENSE THE SAME AS BLACK AND WHITE. . . THAT IT REPRESENTS A CREATIVE CHOICE. THAT THE WHOLE ART OF DIRECTING IS BASED ENTIRELY ON A SERIES OF CHOICES THEREFORE THE RELATIVE WORTH OF A DIRECTOR IS TAKEN FROM THE SUM OF HIS OR HER CHOICES, AND TO TAKE THAT AWAY FROM THE DIRECTOR IS ESSENTIALLY TO ROB HIM OR HER OF WHO AND WHAT THEY ARE.

FROM THE MOMENT OF CHOOSING TO DO A SPECIFIC FILM THE PROCESS BEGINS. THROUGH THE CHOICE OF WRITER OR WRITERS, AND WITH THE WRITER THE CHOICE OF CONTENT IN EACH SCENE, THE CHOICE OF WHO WILL PLAY THE ROLES, WHO WILL PHOTOGRAPH THE FILM, DESIGN THE SETS, IN WHAT CITY WILL IT BE SHOT, SHALL IT BE WIDE SCREEN OR FLAT, WHAT WILL THE ACTORS WEAR, WHO WILL DESIGN THE CLOTHES, WHO WILL EDIT THE EXPOSED FILM WHEN SHOOTING IS FINISHED, WHAT SHALL THE STYLE BE?. . .HARD AND GRITTY OR LYRICAL?. . .FULL OF MOVEMENT OR IN SHORT, STACCATO BURSTS?. . .WHERE WILL THE ACTORS MOVE, HOW LONG SHOULD THEY PAUSE BETWEEN MOMENTS, SHOULD WE SEE THEM FROM THE FRONT OR THE BACK, IN CLOSE UP OR LONG SHOT, BRIGHTLY LIT OR SKETCHY? SHOULD HE WEAR A WATCH?. . .SUSPENDERS?. . .PERHAPS HE FIDDLES WITH RUBBER BANDS, MAYBE SHE CHEWS GUM. IT ALL MAKES A DIFFERENCE, YOU SEE. SHOULD WE PLAY THE SCENE INSIDE THE ROOM OR OUT WALKING BY THE RIVER. . .MAYBE IN A CAR?. . .IS IT A BRIGHT SUNNY DAY OR SHOULD WE MAKE RAIN?. . .HOW MANY EXTRAS?. . .SHOULD THE SCENE LOOK LONELY, OR BUSY AND CONFUSED. . .HARD TO SEE AND HEAR THEM. . .MAYBE SEE THEM ONLY IN SNATCHES. . .MORE OF AN IMPRESSION? SHOULD WE SEE HER FALL DOWN OR ONLY HEAR THE SOUND AND PHOTOGRAPH SOMETHING ELSE? SHOULD WE PUT THE TITLES OVER BLACK OR OVER THE FIRST SCENE? SHOULD THIS SCENE BEGIN IN A CLOSE SHOT OR IN A LONG MASTER SHOT?. . .PERHAPS WE SHOULD CUT THE NEXT SCENE COMPLETELY. . .MAYBE THE FOURTH SCENE SHOULD BE THE THIRD

SCENE, WHAT HAPPENS IF WE TAKE OUT THE DIALOGUE AND JUST PLAY MUSIC? WHO WILL WRITE THE MUSIC? WHERE WILL IT GO. . .AT THE BEGINNING OF THIS SCENE. . .OR IN THE MIDDLE? WHAT WILL BE ITS TEXTURE? A SINGLE INSTRUMENT WITH NO RHYTHM, OR A FULL ORCHESTRA PLAYING SOMETHING GRAND? OR IS IT MORE EFFECTIVE TO HAVE NO MUSIC. . .PERHAPS NO SOUND AT ALL OTHER THAN BREATHING, EVEN THOUGH WE ARE OUTSIDE AND SEE TRAFFIC AND CHILDREN PLAYING? THE PRINT IS TOO DARK, OR TOO LIGHT OR TOO YELLOW OR TOO BLUE. BLUE IS COLDER, MAKES A DIFFERENT MOOD, THE PEOPLE SEEM HAPPIER WHEN THEIR FACES ARE MORE YELLOW. . .WARMER. EACH CHOICE CHANGES, IN SOME WAY, THE SIGNALS WE ARE SENDING TO THE AUDIENCE. EACH AREA REQUIRES FLUENCY IN ONE OF THE VOCABULARIES WE USE TO COMMUNICATE, A TOOL OUT OF WHICH ONE SCULPTS THE FINISHED FILM. IT IS MADE OF NOTHING ELSE. NOTHING. ONLY THE SUM OF THESE CHOICES.

THERE IS A DIFFERENCE BETWEEN A FILM IN BLACK AND WHITE AND A FILM IN COLOR. BLACK AND WHITE PHOTOGRAPHY IS NOT COLOR PHOTOGRAPHY WITH THE COLOR REMOVED. IT IS NOT BETTER OR WORSE IN GENERAL, BUT IT IS DIFFERENT. IT IS. . .A CHOICE. A FILMMAKER HAS NOTHING OTHER THAN THE QUALITY AND INTEGRITY OF HIS OR HER WORK, AND THAT QUALITY AND INTEGRITY ARE MADE OF ABSOLUTELY NOTHING BUT THIS SERIES OF CHOICES. WE ARE HERE TO PROTECT THOSE CHOICES, EVEN TO SAY THAT A DIRECTOR WHO DOES NOT MAKE THOSE CHOICES IS NOT DIRECTING.

BEST COPY AVAILABLE.

WHAT YOU SEE AND HEAR IS WHAT THE FILM IS. CHANGING WHAT YOU SEE IS ALTERING WHAT THE FILM IS.

IT IS IRONIC THAT IN THE UNITED STATES, WHERE THE MOTION PICTURE WAS CREATED, WE WHO MAKE THE FILMS HAVE LESS PROTECTION WITH OUR OWN COUNTRY THAN WE HAVE IN FRANCE, OR ITALY OR JAPAN.

THE FACT THAT I HAPPEN TO PREFER BLACK AND WHITE FOR "THE MALTESE FALCON" IS NOT FINALLY THE DECIDING FACTOR. THE FACT THAT I AGREE WITH VINCENT CANBY WHO WROTE IN THE NEW YORK TIMES, SUNDAY, APRIL 19TH: "THROUGH THE AUSPICES OF COLOR SYSTEMS TECHNOLOGY, 'THE MALTESE FALCON' IS NOW MOSTLY GRAYISH-BLUE. MARY ASTOR'S BATHROBE COMES OUT A BABY GRAYISH-BLUE, HUMPHREY BOGART'S PIN-STRIPE SUIT IS A DARK GRAYISH-BLUE, AND HIS FEDORA A CHANGEABLE, LIGHT GRAYISH-BLUE (THOUGH IT FREQUENTLY TURNS KHAKI COLOR, EVEN WHILE ON HIS HEAD). THE OLD BLACK MAGIC OF THE ORIGINAL BARELY SHINES THROUGH THIS SINGULARLY INEPT 'COLOR CONVERSION.' ALL THE ACTORS APPEAR TO BE WEARING THE SAME ORANGEY MAX FACTOR PANCAKE MAKEUP, CREATING HEAVENLY HALOS AROUND THEIR FACES IN LONG SHOTS. EVERYONE HAS THE SAME, SIMILARLY TINTED BEIGE LIPS AND THE SAME BROWN-BUTTON EYES. ONE OF THE CURIOUS SIDE EFFECTS OF THIS TECHNOLOGICAL ADVANCE: EVERY MAN IN THE CAST SEEMS TO HAVE DYED HIS HAIR IN THE SAME VAT OF RAISIN-COLORED RINSE. OPPONENTS OF SO-CALLED 'COLORIZATION' COULDN'T ASK FOR A BETTER ARGUMENT THAN THIS." PERHAPS THESE CONCERNS

MUST BE BRUSHED ASIDE IN THE INTERESTS OF WHAT WE ARE TOLD IS PROGRESS. EVEN THE FACT THAT I AM HEARTBROKEN AT THE PROSPECT OF SEEING INGRID BERGMAN SAY THAT LAST GOODBYE TO 'BOGIE' THROUGH ALL THAT FOG (IN "CASABLANCA") IN SOME KIND OF MADE UP, TACKED ON COLOR, IS PERHAPS BESIDE THE POINT. BUT THE PROSPECT OF SOMEONE TAKING AWAY FROM THE FILM DIRECTOR WHO HE OR SHE IS AND WHAT HE OR SHE DOES, WHICH IS MAKE THE SERIES OF CHOICES THAT FINALLY BECOME A MOTION PICTURE IS NOT BESIDE THE POINT. IT IS THE POINT AND WE CANNOT ALLOW THAT TO HAPPEN.

SYDNEY POLLACK

Of Sydney Pollack's fourteen films, eight appear on Variety's list of "All Time Rental Champs". His films have received 43 Academy Award nominations including four for Best Picture. Pollack himself has been nominated three times. His latest film OUT OF AFRICA won seven Oscars including Best Picture, Best Director for Pollack, and Best Screenplay. He won the New York Film Critics' Award for the highly acclaimed TOOTSIE. He also won the Golden Globe, the National Society of Film Critics' Award, the NATO Director of the Year Award and prizes at the Moscow, Taormina, Brussels, Belgrade and San Sebastian Film Festivals.

Sydney Pollack was born July 1, 1934 in Lafayette, Indiana. He has a brother, Bernie, a costume designer, and a sister, Sharon. He and his wife, Claire, have three children, Steven, Rebecca, and Rachel. They make their home in Pacific Palisades, California.

5/6/87

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FILMOGRAPHY

THE SLENDER THREAD. 1965. Paramount. Screenplay: Sterling Silliphant. Stars Sidney Poitier, Anne Bancroft.

THIS PROPERTY IS CONDEMNED. 1966. Paramount. Screenplay: Francis Ford Coppola, Edith Summers, Fred Coe. From the play by Tennessee Williams. Stars Natalie Wood, Robert Redford.

THE SCALPHUNTERS. 1967. United Artists. Screenplay: William Norton. Stars Burt Lancaster, Ossie Davis, Telly Savalas, Shelly Winters.

CASTLE KEEP. 1968. Columbia. Screenplay: Daniel Taradash and David Rayfiel. Novel by William Eastlake. Stars Burt Lancaster, Peter Falk, Jean-Pierre Aumont.

THEY SHOOT HORSES, DON'T THEY? 1969. Cinerama. Screenplay: James Poe and Robert E. Thompson. Novel by Horace McCoy. Stars Jane Fonda, Gig Young, Suzannah York, Red Buttons, Bonnie Bedelia, Bruce Dern.

JEREMIAH JOHNSON. 1971/72. Warner Bros. Screenplay: John Milius and Edward Anhalt. Stars Robert Redford, Will Geer.

THE WAY WE WERE. 1973. Columbia. Screenplay: Arthur Laurents. Stars Barbra Streisand and Robert Redford.

THE YAKUSA. 1974/75. Warner Bros. Screenplay: Paul Schrader and Robert Towne. Stars Robert Mitchum, Takakura Ken.

3 DAYS OF THE CONDOR. 1976. Paramount. Screenplay: Lorenzo Semple, Jr. and David Rayfiel. Stars Robert Redford and Faye Dunaway.

BOBBY DEERFIELD. 1977. Columbia/Warner Bros. Screenplay: Alvin Sargent. Stars Al Pacino and Marthe Keller.

THE ELECTRIC HORSEMAN. 1979. Columbia. Screenplay: Robert Garland. Story: Paul Gaer and Robert Garland. Stars Robert Redford and Jane Fonda.

ABSENCE OF MALICE. 1981. Columbia. Screenplay: Kurt Luedtke. Stars Paul Newman and Sally Field.

TOOTSIE. 1982. Columbia. Screenplay: Larry Gelbart and Murray Schisgal. Stars Dustin Hoffman, Jessica Lange, Teri Garr, and Dabney Coleman

OUT OF AFRICA. 1985. UNIVERSAL. Screenplay: Kurt Luedtke. Stars Robert Redford, Meryl Streep, and Klaus Maria Brandauer.

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DIRECTORS GUILD OF AMERICA

STATEMENT OF MILOS FORMAN

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY

AND THE LAW

OF

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MAY 12, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE.

FOR THE FIRST 37 YEARS OF MY LIFE I LIVED IN EUROPE AND THUS FEEL QUALIFIED TO TESTIFY THAT THE ONLY UNITED STATES AMBASSADOR WHO IS WELCOMED WITH OPEN ARMS AND ADMIRATION BY EVERYBODY, EVERYWHERE IN THE WORLD, IS AMERICAN FILM. THE IMPACT AMERICAN FILM HAS ON HUNDREDS AND MILLIONS OF PEOPLE ON THE PLANET EARTH IS ASTONISHING AND WE ALL CAN BE VERY PROUD OF IT. YOU SHOW PEOPLE THE HOLLYWOOD GLAMOUR AND THEY ADMIRE THE GLAMOUR. YOU GIVE THEM FILMS CRITICAL OF OUR SOCIETY, FILMS SHOWING OUR DARK SIDE AND THEY ADMIRE THE FREEDOM WE HAVE IN THIS COUNTRY TO TALK ABOUT OURSELVES. WHICHEVER END OF THE STICK YOU GRAB, AMERICAN FILM IS ALWAYS THE WINNER.

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SO YOU CAN IMAGINE HOW SADDENED I WAS WHEN, AFTER COMING TO THE UNITED STATES, I LEARNED THAT THIS WONDERFUL AND PROUD AMBASSADOR OF OUR CULTURE, WHEN THEY RETURN HOME, TO THE HOMES OF AMERICANS ON TELEVISION, THEY ARE TREATED BY THE MONEY PEOPLE NOT EVEN AS SECOND CLASS CITIZENS, BUT AS SAUSAGES ON THE BUTCHER BLOCK.

THEY ARE CUT, COLORIZED, PANNED AND SCANNED, SPED UP AND ALTERED. AND I LEARNED IT THE HARD WAY. IN 1979 I MADE A MUSICAL FILM FOR UNITED ARTISTS WHICH WAS EVENTUALLY SOLD TO 115 SYNDICATED AMERICAN TV STATIONS WITH 9 ENTIRE MUSICAL NUMBERS CUT OUT AND NUMEROUS OTHER CUTS AND ALTERATIONS THROUGHOUT THE WHOLE FILM. BUT MY NAME WAS STILL ON IT. THE FILM WAS STILL SOLD AS THE ORIGINAL (AS A MILOS FORMAN FILM). WHEN I ASKED MY LAWYERS IF I HAD ANY PROTECTION AGAINST SUCH MUTILATION OF MY WORK, I WAS TOLD "IF YOU ARE NOT PROTECTED BY YOUR INDIVIDUAL CONTRACT, THERE IS NOTHING IN AMERICAN LAW WHICH PROTECTS THE RIGHTS OF CREATIVE AUTHORS OF MOTION PICTURES. WHOEVER BUYS THEM CAN DO WITH THEM ANYTHING THEY WISH. AND, THEY CAN SELL THEM AFTER THE ALTERATIONS AS THE ORIGINAL WORK.

IT WAS SHOCKING FOR ME TO DISCOVER THAT THE CREATIVE AUTHORS OF THIS GENUINELY AMERICAN ART FORM ARE MUCH BETTER PROTECTED IN EVERY OTHER COUNTRY OF THE CIVILIZED WORLD, THAN THEY ARE IN THE UNITED STATES.

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FOR EXAMPLE, IF I COMMISSION A PAINTING, IT DOESN'T MATTER IF IT IS A PICASSO OR FROM AN UNKNOWN, IT IS MINE. I PAID FOR IT. I OWN IT AND NOBODY CAN PROTECT IT AGAINST ME DOING ANYTHING I WISH. I CAN CHANGE COLORS, I CAN ALTER THE LINES, I CAN EVEN CUT A FEW INCHES HERE AND THERE TO ACCOMMODATE THE SPACE OF MY WALL. SHOULD I STILL BE ABLE TO SELL IT AS A PICASSO OR SOMEBODY ELSE'S ORIGINAL? I BELIEVE NOT.

I REALIZE THAT I AM HIRED AND PAID BY THE MONEY PEOPLE TO MAKE A FILM. BUT SO WAS MICHELANGELO WHOM MEDICI HIRED AND PAID TO PAINT THE SISTINE CHAPEL. STILL NONE OF THE MEDICIS WENT INSIDE DURING THE NIGHT AND CHANGED COLORS OR REPAINTED OR OTHERWISE ALTERED MICHELANGELO'S WORK. BUT OF COURSE, THOSE WERE THE MIDDLE AGES. OR WERE THEY?

PLEASE UNDERSTAND ONE THING: I AM NOT SAYING THAT OUR FILMS ARE UNTOUCHABLE, THAT NOTHING CAN BE ALTERED. OF COURSE, EVERYTHING CAN BE ALTERED. BUT THE ONLY PERSON WHO SHOULD HAVE THE RIGHT TO ALTER, OR SUPERVISE SUCH ALTERATIONS ARE THE CREATIVE AUTHORS OF THE WORK. NOBODY ELSE! OTHERWISE WE ARE LEAVING THE CIVILIZED WORLD AND ENTERING THE JUNGLE. FOR EXAMPLE IF WE DECIDE THAT COLORIZATION WITHOUT THE APPROVAL OF THE CREATIVE AUTHORS IS PERMISSIBLE BECAUSE COLORIZATION CHANGES NEITHER THE STORY, NOR

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THE CHARACTERS, NOR THE ORIGINAL NEGATIVES OF THE FILM, LEADS IMMEDIATELY TO INTERESTING IDEAS: WHY NOT JAZZ UP A LITTLE THE MUSIC IN "GONE WITH THE WIND"? KIDS ARE TODAY HEAVILY IN HEAVY METAL SO LETS REPLACE THE SOUNDTRACK WITH ELECTRIC GUITARS AND DRUMS. THAT ALSO WILL NOT CHANGE NEITHER THE STORY NOR THE CHARACTERS OR THE ORIGINAL NEGATIVES.

AND WHERE IT WILL GO FROM THERE? TECHNOLOGICAL PROGRESS WILL NOT STOP. WHO KNOWS WHAT WILL BE POSSIBLE WITH THE VISUAL AND AUDIO ELEMENTS OF THE FILM TOMORROW? MY DEEP CONVICTION IS THAT IF THE CREATIVE AUTHORS OF THE FILMS ARE NOT GIVEN THE RIGHT TO APPROVE OR DISAPPROVE ANY, AND I EMPHASIZE THE WORD ANY ALTERATION OF HIS OR HER WORK, AMERICAN FILM, THIS POWERFUL PART OF AMERICAN CULTURAL HERITAGE WILL IN THE FUTURE BE CONSTANTLY HUMILIATED AND FINALLY MUTILATED BEYOND RECOGNITION.

FILMS DIRECTED BY MILOS FORMAN

1963	COMPETITION (Czech)
1963	BLACK PETER (Czech)
1965	LOVES OF A BLONDE (Czech)
1967	FIREMAN'S BALL (Czech)
1971	TAKING OFF (U.S.)
1972	VISIONS OF EIGHT (The "Decathlon" episode from 1972 Munich Olympic Games)
1975	ONE FLEW OVER THE CUCKOO'S NEST (U.S.)
1979	HAIR (U.S.)
1981	RAGTIME (U.S.)
1983	AMADEUS (U.S.)

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DIRECTORS GUILD OF AMERICA

STATEMENT OF ELLIOT SILVERSTEIN

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY

AND THE LAW

OF

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MAY 12, 1987

MR CHAIRMAN AND SENATORS:

SPEAKING ON BEHALF OF THE DELEGATION FROM THE DIRECTORS GUILD OF AMERICA, I WOULD LIKE TO THANK YOU FOR GIVING US AN OPPORTUNITY TO BE HEARD BEFORE THIS DISTINGUISHED COMMITTEE AND TO TAKE OUR FIRST STEPS BEFORE YOU IN OUR SEARCH FOR REDRESS OF A GRIEVANCE. WE ARE HERE TO TRY TO ILLUMINATE FOR YOU THE DIRECTORS GUILD'S VIEW OF WHAT WE CONSIDER TO BE AN ASSAULT ON OUR NATIONAL CULTURAL HERITAGE, THE DEFACEMENT OF THE WORK OF FILM ARTISTS OF THE PAST, AND THE CHILLING HAND OF RESTRAINT ON FILM ARTISTS WHO WILL CREATE FOR AND IN THE FUTURE.

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WHO AND WHAT IS THE DIRECTORS GUILD OF AMERICA AND WHY IS IT SAYING ALL THESE NASTY THINGS ABOUT THE NICE COMPANIES THAT LOVE OUR BLACK AND WHITE FILMS SO MUCH THAT THEY HAVE CHOSEN TO MAKE THEM MORE READILY AVAILABLE BY PRESENTING THEM TO THE NATION IN COMPUTER COLORED DISGUISE?

THE DIRECTORS GUILD IS A LABOR ORGANIZATION, CONSISTING OF ALMOST EIGHTY FIVE HUNDRED MEN AND WOMEN ACROSS THE COUNTRY, ALMOST FORTY-FIVE HUNDRED OF WHOM ARE DIRECTORS, AND ALMOST TWENTY-FOUR HUNDRED OF WHOM ARE DIRECTORS OF SCREEN PLAYS. OTHER MEMBERS ARE ASSISTANT DIRECTORS, UNIT PRODUCTION MANAGERS, ASSOCIATE DIRECTORS, AND STAGE MANAGERS IN TELEVISION, AND DIRECTORS OF NON-SCREEN OR TELEPLAY PRODUCTIONS, SUCH AS SPORTS DIRECTORS, NEWS DIRECTORS AND SO FORTH.

LAST YEAR WE CELEBRATED FIFTY YEARS OF DEVOTION TO THE PURPOSES THAT BROUGHT OUR FOUNDERS TOGETHER, THE MOST IMPORTANT OF WHICH WAS THE ENHANCEMENT OF ARTISTIC RIGHTS AND THE ESTABLISHMENT OF STANDARDS FOR PROFESSIONAL DISCIPLINE AND GOALS.

TO BE SURE, IN OUR LABOR NEGOTIATIONS WITH THE PRODUCERS ASSOCIATION, WE PURSUE THE SAME GENERAL GOALS AS OTHER LABOR GROUPS. BUT, IN ONE WAY IN WHICH WE NEGOTIATE FOR THE RIGHT TO DO OUR JOBS WELL, THE DIRECTORS GUILD MAKES A CLAIM TO UNIQUENESS.

A VITAL PART OF OUR LABOR CONTRACT WITH OUR EMPLOYERS IS ENTITLED "CREATIVE RIGHTS." LET ME EXPLAIN THEIR PERTINENCE TO THIS HEARING. THERE ARE THREE MAJOR PHASES TO FILMMAKING: THE PREPRODUCTION PHASE (PREPARATION OF SCRIPT, CASTING, SELECTION OF STAFF AND LOCATION, BUDGETING ETC.) PRODUCTION -THE ACTUAL PHOTOGRAPHY OF THE FILM, AND THE POSTPRODUCTION PHASE WHERE ALL OF THE MATERIAL GATHERED IN PRODUCTION IS MARRIED. ACCORDING TO AESTHETIC JUDGEMENTS, THE PRINTED TAKES ARE CUT INTO SELECTED PIECES, ARRANGED SEQUENTIALLY IN THE PROCESS CALLED EDITING, THEN MUSIC AND SOUND EFFECTS ARE CHOSEN, COLOR IS BALANCED AND, IN THE BLACK AND WHITE PROCESS, THE AMOUNT OF DENSITY AND THE QUALITY OF CONTRAST ARE CHOSEN BASED ON THE INFORMATION ON THE NEGATIVE.

"CREATIVE RIGHTS" IS A TITLE GIVEN TO A LIST OF RECORDED ACKNOWLEDGMENTS, CONTAINED IN OUR BASIC MINIMUM CONTRACTS, WITH THE PRODUCERS ASSOCIATION, THAT DIRECTORS ARE ARTISTS, AND AS SUCH HAVE CERTAIN <u>RIGHTS</u> (NOT PRIVILIGES) CONNECTED WITH THE MAKING OF THE FILM. THESE RANGE FROM THE SIMPLE RIGHT TO BE FULLY CONSULTED ON EVERY ARTISTIC DECISION AFTER THE DIRECTOR'S EMPLOYMENT BEGINS, TO THE RIGHT TO MAKE A "DIRECTOR'S CUT", THAT IS TO MAKE HIS/HER VERSION OF HOW THE FILM SHOULD APPEAR (IN WHAT SEQUENCE SCENES SHOULD FLOW, WHICH IMAGE SHOULD APPEAR, IN WHAT RHYTHM THE IMAGES SHOULD CHANGE, WHERE PAUSES SHOULD BE LENGTHENED OR SHORTENED ETC.)

- FROM THE RIGHT OF FULL DISCLOSURE OF ANY DECISIONS PREVIOUSLY REACHED BY THE EMPLOYER WHICH MAY AFFECT THE DIRECTOR'S ARTISTIC CHOICES THROUGH MANY MANY OTHERS UP TO THE UNUSUAL RIGHT NOT TO BE DISCHARGED AFTER COMPLETION OF PHOTOGRAPHY FOR ANY REASON OTHER THAN GROSS WILLFUL MISCONDUCT. THIS, SO THAT WE CAN NOT BE DEPRIVED OF THE PRECIOUS POSTPRODUCTION RIGHTS WE HAVE NEGOTIATED. WITH YOUR PERMISSION, A COPY OF OUR CONTRACT WILL BE OFFERED TO YOU FOR THE RECORD.

OUR DEVOTION, AS A GUILD, TO ARTISTIC STANDARDS IS SHOWN IN MANY DIFFERENT WAYS, BUT THE ONE WHICH I THINK WILL BE OF GREATEST INTEREST TO THE COMMITTEE, MR. CHAIRMAN, IS COMPENSATION -- OF A VERY SPECIAL KIND. IN ITS BASIC MINIMUM AGREEMENT WITH PRODUCING COMPANIES THE DIRECTORS GUILD ASKS ITS DIRECTORS OF SCREENPLAYS AND TELEPLAYS TO DO CERTAIN WORK <u>FOR NOTHING.</u> WE HAVE AGREED TO CARRY OUT PARTICULAR POSTPRODUCTION TASKS <u>FOR NO PAY</u> FOR A PERIOD WHICH CAN RANGE FROM DAYS TO MONTHS. WE EVEN DISCIPLINE THOSE OF OUR MEMBERS WHO SHIRK THEIR RESPONSIBILITY TO OUR PROFESSIONAL STANDARDS.

OUR COMPENSATION, THEREFORE, IS NOT IN COIN ALONE. IT LIES, IN VERY LARGE PART, IN LOVE OF THE ART OF BRINGING A SCREENPLAY TO LIFE - IN THE SATISFACTION OF REALIZING VISIONS WHICH WE LOVE - VISIONS THAT HAVE BEEN CARRIED IN THE WOMBS OF OUR IMAGINATIONS AS THEY HAVE UNDERGONE ALL KINDS OF NEEDED COMPROMISES AND ASSAULTS WHICH RUN THE GAMUT FROM INADEQUATE TIME OR MONEY, UNSTABLE PERSONNEL, NERVOUS AND/OR INEXPERIENCED EXECUTIVES, BAD WEATHER, ACCIDENTS EXHAUSTION, ILLNESS, OUR OWN LIMITATIONS - OR ALL OF THE ABOVE. WHEN PHOTOGRAPHY IS FINISHED EVEN THOSE OF US WHO WORK ON THE BASIS OF A SCALE CONTRACT SET ABOUT EDITING THE FILM FOR

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NO ADDITIONAL PAY, REMAINING WITH IT FOR NO ADDITIONAL PAY. HAVING DEDICATED OURSELVES SINGULARLY AND COLLECTIVELY TO SEEKING THE OPPORTUNITY TO ACHIEVE THE HIGHEST QUALITY OF WORK OF WHICH WE ARE INDIVIDUALLY CAPABLE, HAVING PHYSICALLY AND EMOTIONALLY SURVIVED THE RIGORS OF THE CREATIVE PROCESS, ONLY TO BE ROBBED OF THE INTELLECTUAL FRUITS, WE FEEL IS AN UNACCEPTABLE AND UNDESERVED PENALTY FOR OUR ASPIRATIONS TOWARD EXCELLENCE.

SO OUR SENSIBILITIES ARE ACUTELY BRUISED WHEN WE SEE "OUR CHILDREN" PUBLICLY TORTURED AND BUTCHERED ON TELEVISION BY THE VARIOUS INSTRUMENTS OF THE NEW TECHNOLOGISTS. THERE ARE A FEW EXAMPLES: FIRST, OUR FILMS ARE SPEEDED UP: AS YOU KNOW, FILM TRAVELS THROUGH THE CAMERA AND THE PROJECTOR AT 24 FPS. BY TRANSFERRING THE FILM TO TAPE AND DROPPING THE EQUIVALENT OF ONE OR TWO OF THOSE FRAMES PER SECOND OVER THE COURSE OF TWO HOURS, A SUBSTANTIAL NUMBER OF MINUTES ARE GAINED FOR COMMERCIAL MESSAGES. ANOTHER MACHINE COMPENSATES FOR THE RISE IN FREQUENCY OF THE ACTORS' VOICES. AS YOU ALL MUST KNOW, ACTORS AND DIRECTORS WORK VERY HARD ON A SET TO ACHIEVE, AMONG OTHER THINGS, EXACTLY THE RIGHT PACE. MANY HOURS ARE SPENT TO GET A SCENE TO PLAY JUST SO LONG AND GET A PAUSE TO BE JUST SO SHORT. ALL OF THIS WORK IS OBLITERATED BY THE MARKETEER AND THE ENGINEER! SECOND, OUR FILMS ARE "PANNED AND SCANNED." FILMS ARE PHOTOGRAPHED IN DIFFERENT ASPECT RATIOS (OR FRAME SIZES) WHICH VARY FROM A FRAME THE SIZE OF 1 UNIT HIGH TO 1.33 UNITS WIDE TO THE WIDE SCREEN CONSISTING OF PROPORTIONS OF 1 TO 2.35 UNITS. A SHOT MADE OF A CANOE, WOULD IN WIDE SCREEN, FOR INSTANCE, CONTAIN BOTH THE BOWMAN AND THE STERN MAN. WHEN SCREENED ON TELEVISION THE MARKETEER HAS ONE OF FOUR CHOICES, SHOW THE BOWMAN, SHOW THE STERN MAN, SHOW THE MIDDLE OF THE CANOE WITHOUT EITHER, OR PAN

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AND SCAN - I.E. MOVE A SCANNER BACK AND FORTH ACROSS THE FILM FROM THE BOW TO THE STERN AND BACK AGAIN, FOLLOWING THE EXCHANGE OF DIALOGUE. HE THEREBY IMPOSES A RHYTHM, EMPHASIS, MOVEMENT AND IMAGERY FOREIGN TO THE FILMMAKERS IDEA. AND THEN FINALLY, THE LAST STRAW - THE LIGHTNING ROD OFFENSE THAT BRINGS US HERE TODAY -SEEING THOSE FILMS WHICH WERE MADE IN BLACK AND WHITE, DOUSED IN WHAT IS, IN OUR OPINION AND THAT OF ALMOST ALL CRITICS, INFERIOR COMPUTER GENERATED COLOR.

APART FROM POSITIONS AND PERCEPTIONS, THERE IS ONE CLEAR AND DISTINCTIVE DIFFERENCE BETWEEN THE COLOROIDS AND US. THAT DIFFERENCE IS MONEY. THERE ARE THOSE, WHO STAND TO PROFIT FROM THE COMPUTER COLORING OF OTHER PEOPLE'S WORK AND THOSE LED BY THE DIRECTORS GUILD OF AMERICA WHO STAND TO GAIN <u>NOT ONE PENNY.</u> MOST MEMBERS OF THE DIRECTORS GUILD HAVE NEVER MADE A BLACK AND WHITE FILM AND MAY NEVER HAVE THE OPPORTUNITY TO DO SO. MR. ROGER MAYER, PRESIDENT OF TURNER ENTERTAINMENT, WAS GENTLEMAN ENOUGH RECENTLY, TO PUBLICLY ACKNOWLEDGE THE MORAL AND ETHICAL NATURE OF OUR CAUSE. I RESPECTFULLY SUGGEST THAT THE COMMITTEE JUDGE THE VARIOUS ARGUMENTS OFFERED TO YOU IN THE LIGHT NOT ONLY OF MERIT BUT OF MOTIVATION.

LAST SUMMER OUR GUILD PRESIDENT GILBERT CATES ASKED ME TO TO CHAIR A COMMITTEE OF PROMINENT DIRECTORS, (A FEW OF WHICH ARE HERE TODAY) WHO WERE TO DISCUSS NEW TECHNOLOGIES THAT WERE THREATENING THE INTEGRITY OF THE FILMMAKING PROCESS. I WOULD LIKE TO READ TO YOU A PART OF THAT REPORT WHICH OUTLINES OUR PHILOSOPHY ON THE SUBJECT OF COMPUTER COLORING. IT WAS UNANIMOUSLY ADOPTED BY OUR NATIONAL BOARD AND THE IDEAS IT EXPRESSED PROVIDE THE BASIS FOR SIMILAR

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POSITIONS TAKEN BY ALMOST ALL ARTISTIC GUILDS, OTHER INTERESTED GROUPS AND CRITICS.

THE ACT OF ARTISTIC DESECRATION WHEREBY A SPECIFIC DRAMATIC AND PHOTOGRAPHIC VISION IS ALTERED, AFTER THE FACT, BY A GROUP OF TECHNICIANS, WITH NEITHER THE ADVICE NOR THE CONSENT OF THE ARTISTS WHO CREATED THESE IMAGES IN THE FIRST PLACE, CONSTITUTES IN THE WORDS OF JOHN HUSTON, "AS GREAT AN IMPERTINENCE AS FOR SOMEONE TO WASH FLESH TONES ON A DA VINCI DRAWING.

THE DEFENDERS OF COMPUTER COLORING CLAIM THAT IN MANY INSTANCES COLOR FILM WAS NOT AVAILABLE AT THE TIME THESE PICTURES WERE MADE! WE BELIEVE THAT THIS IS A POINTLESS ARGUMENT. WHETHER IT WAS OR NOT, THE FACT OF THE MATTER IS THAT FILMS, LIKE OTHER ARTISTIC PRODUCTS HAVE PERSONALITIES OF THEIR OWN. IN MANY CASES, BLACK-AND-WHITE WAS CHOSEN AND COLOR SPECIFICALLY REJECTED FOR ARTISTIC REASONS. SOME OF THE ARTISTS REMAIN ALIVE TO TESTIFY TO THE DELIBERATENESS OF THEIR CHOICES. THE GUILD MUST SUPPORT THEM AND LENDS ITS VOICE IN PROTECTION OF THE WORK OF THOSE ARTISTS WHO ARE NOT HERE TO DEFEND THEIR WORK THEMSELVES.

THE REAL POINT TO BE ADDRESSED IS THAT IF FILMS WERE MADE IN BLACK-AND-WHITE (FOR WHATEVER REASON), THEIR CREATORS DESIGNED THEM TO TAKE ADVANTAGE OF THE UNIQUE OPPORTUNITIES AND POSSIBILITIES AS WELL AS THE

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THE LIMITATIONS OFFERED BY BLACK AND WHITE PHOTOGRAPHY. "COLORIZATION" SIMPLY UNDERMINES THESE VALUES AND INTENTIONS. THE FUNDAMENTAL MISTAKE MADE BY THOSE WHO PROMULGATE "COLORIZATION" IS THAT BLACK AND WHITE FILMS NEED TO BE "IMPROVED". THEY ARE WHAT THEY ARE, FOR BETTER OR FOR WORSE. ADDING COLOR TO ORIGINAL BLACK AND WHITE FILMS MAKES THEM SOMETHING DIFFERENT THAN THEY WERE. "GRAPES OF WRATH" IN COLOR WOULD NOT BE "GRAPES OF WRATH", AS DIRECTED BY JOHN FORD. LIKEWISE, "CITIZEN KANE", "CASABLANCA" AND COUNTLESS OTHER CINEMATIC TREASURES WILL BE FATALLY DILUTED IF SUBJECTED TO THE "COLORIZING" ANNIHILATION.

"COLORIZATION" ADVOCATES ALSO MAINTAIN THAT VIEWERS WHO ARE OFFENDED BY THE PROCESS HAVE THE OPTION OF TURNING DOWN THE COLOR KNOB ON THEIR TELEVISION SETS. WE TAKE STRONG EXCEPTION TO SUCH A SUGGESTION AS A FUNDAMENTAL CORRUPTION OF THE ARTISTS' PROFESSIONAL RIGHTS. THE CHOICE OF THE APPEARANCE OF ANY WORK OF ART DOES NOT REST WITH THE READER, THE LISTENER, THE VIEWER OR THE AUDIENCE. IT RESTS WITH THE ARTIST. IT IS PERHAPS THE MOST BASIC RIGHT OF THE ARTIST, AND ONE THAT THE DIRECTORS GUILD, AS YOU KNOW, HAS FOUGHT FOR BY MEANS OF MANY PUBLIC DEBATES AND THROUGH MANY CONTRACT NEGOTIATIONS. BUT THERE IS AN EQUALLY COMPELLING REASON THAT WE BELIEVE THAT THE GUILD SHOULD OPPOSE "COLORIZATION". WE BELIEVE THAT "COLORIZATION" REPRESENTS THE MUTILATION OF

HISTORY, THE VANDALISM OF OUR COMMON PAST, NOT MERELY AS IT RELATES TO FILM, BUT AS IT AFFECTS SOCIETY'S PERCEPTION OF ITSELF. "COLORIZATION" IS A RE-WRITING OF HISTORY, WHICH WE BELIEVE TO BE INHERENTLY DANGEROUS. WE BELIEVE THAT THE DIRECTORS GUILD SHOULD SUPPORT THE NOTION THAT NO CIVILIZATION WORTHY OF THE NAME CAN AFFORD TO PROMULGATE LIES ABOUT ITSELF.

IF WE DO NOT PRESERVE WITH FIDELITY IMAGES OF HOW WE ONCE VIEWED OURSELVES, WE INCREASE THE LIKELIHOOD THAT WE WILL ARRIVE AT A DISTORTED UNDERSTANDING OF WHO WE ARE AND HOW WE GOT THAT WAY."

"BUT," SAY THE "COLOROIDS", IGNORING US, "MANY BLACK AND WHITE FILMS WERE NOT MADE BY CHOICE BUT BY STUDIO FIAT AND MANY DIRECTORS WOULD HAVE WANTED COLOR IF THEY HAD BEEN ALLOWED TO USE IT."

PUTTING ASIDE THE QUESTION WHETHER ANY PROFESSIONAL WOULD STILL HAVE A JOB AFTER MISAPPLYING SUCH COLORS, THE REASON THAT THE PALETTE, WAS OR IS, LIMITED TO BLACK AND WHITE, MAY BE HISTORICALLY INTERESTING BUT IT IS ARTISTICALLY IRRELEVANT. WE WORK, LIKE MOST ARTISTS, WITH WHAT WE HAVE. FOR EXAMPLE, BLACK AND WHITE PHOTOGRAPHY IS NOT COLOR PHOTOGRAPHY WITH THE COLOR REMOVED. IT INVOLVES A COMPLETELY DIFFERENT TECHNIQUE WHICH MY COLLEAGUES WILL ADDRESS.

NOW TO THE QUESTION OF WHY ANYONE SHOULD CARE, PARTICULARLY THE INTELLECTUAL LEADERS AND LAWMAKERS OF OUR SOCIETY. LET ME OFFER SOME REASONS. NO ART (INCLUDING FILM ART) IS CREATED IN A SOCIAL

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VACUUM. OUR ARTISTS HAVE BEEN FORMED AND INFORMED BY OUR CULTURE, WHICH IN MOST CASES GAVE THEM BIRTH, AND IN ALL CASES GAVE THEM AN OPPORTUNITY FOR THE KIND OF FREE EXPRESSION THAT LED FINALLY TO THE PRODUCTION OF THEIR WORK - WORK UNIQUE AND SPECIAL TO THEIR NATION, BORN OF A PARTICULAR TIME AND A PARTICULAR PLACE, SOLVING PARTICULAR AESTHETIC AND TECHNICAL PROBLEMS WITH THE PARTICULAR TOOLS AVAILABLE TO THEM AT THAT TIME.

THE CULTURE OF THE UNITED STATES, LIKE THAT OF MOST OTHER COUNTRIES, HAS BEEN SUPPORTED AND PROTECTED BY THE TAXES OF THE PEOPLE AND SOMETIMES BY THEIR LIVES. IN A VERY REAL SENSE THEREFORE, THERE IS A NATIONAL INTEREST - AN INVESTMENT IN SEEING TO IT THAT CULTURE (OF WHICH ART IS AN IMPORTANT INGREDIENT) IS PRESERVED.

IN FACT, IN SUPPORT OF THIS THESIS, THE FEDERAL GOVERNMENT MAKES FUNDS AVAILABLE TO CERTAIN ORGANIZATIONS, SUCH AS THE AMERICAN FILM INSTITUTE, THE SMITHSONIAN, AND THE LIBRARY OF CONGRESS FOR THE RESTORATION OF BLACK AND WHITE FILMS.

ONE MIGHT SAY, TO BE SPECIFIC, THAT FRANK CAPRA DID NOT CREATE "IT'S A WONDERFUL LIFE" BY HIMSELF BUT WAS NURTURED BY THE CULTURAL HERITAGE WHICH PRECEDED AND ENCOURAGED HIM. THAT WORK, THEREFORE, IN ONE SENSE, BELONGS TO THE WHOLE NATION.

WE, AT THE DGA, DO NOT CONTEST THE RIGHTS OF THE OWNERS OF ART (INCLUDING FILM) TO BUY, SELL, SHOW OR NOT TO BUY, SELL OR SHOW WHAT THEY OWN. BUT WE FEEL THAT THEY SHOULD (AND MUST BE MADE TO) ACKNOWLEDGE THAT THERE IS A MORAL COMPONENT IN THEIR OWNERSHIP RIGHT -- A CUSTODIAL RESPONSIBILITY TO PASS ON THE WORKS THEY HOLD

TO THE NEXT GENERATION, UNCHANGED AND UNDISTORTED. IN TRYING TO PROFIT FROM THE PRESENT, WE SHOULD NOT BREAK CONTINUITY INTO THE FUTURE BY GREEDILY DEVOURING-IN FACT, CANNIBALIZING OUR OWN PAST.

OUR ADVERSARIES IN THIS HEARING ARE APPARENTLY INSENSITIVE TO ANY SUCH MORAL PRINCIPLES WHICH MIGHT GUIDE THEIR ENTREPRENEURIAL ADVENTURES. THEY HAVE SAID SO. THE BUCK IS THEIR ONLY BIBLE, NO MATTER HOW THEY RATIONALIZE IT. BUT THAT IS NOT ENTIRELY CORRECT. MR. TURNER, WHEN ASKED WHY HE WAS COLORING THE CLASSIC FILM "CASABLANCA", SAID HE WAS DOING IT BECAUSE "HE LOVED THE CONTROVERSY." WE FIND THAT STATEMENT BOTH IRRESPONSIBLE AND OUTRAGEOUS.

TO SUM UP, MR CHAIRMAN, SOME THINGS HAVE A VALUE BEYOND PRICE. WE LOOK TO THE CONGRESS, WHICH, THROUGH ITS LAWS, UNDERLINES THE VALUES WE ALL SHOULD HOLD MOST DEAR, TO TEACH THE NATION THAT IT SHOULD GIVE CONSIDERATIONS OF POTENTIAL PERMANENT CULTURAL LOSS PRIMACY OVER THOSE WHICH PERMIT SHORT TERM BUCCANEERING PROFIT - A PROCESS MADE MORE COMPLEX WITH THE ENTRANCE ONTO THE SCENE OF THE COMPUTER AS AN INGENIOUS INSTRUMENT OF DEFACEMENT. AS WE ALL KNOW, HOWEVER, THROUGH OUR NATIONAL HISTORY, MANY ADJUSTMENTS IN THE LAW HAVE BEEN MADE IN ORDER TO BRING PROPERTY OWNERSHIP INTO GREATER HARMONY WITH LEGISLATORS' PERCEPTION OF THE PUBLIC INTEREST. AND SO, WE HOPE THAT WE CAN PERSUADE THE CONGRESS TO DRAW A GUIDELINE IN ORDER TO RESTRAIN SOME CITIZENS WHO PERCEIVE MORAL RESPONSIBILITIES RATHER NARROWLY AND SOLELY IN TERMS OF THEIR OWN ECONOMIC INTERESTS.

SADLY, WE HAVE SEEN RECENTLY MR. CHAIRMAN, EXAMPLES OF CASUAL ADHERENCE TO LONG TREASURED AMERICAN VALUES OF FAIR PLAY AND

INATTENTION TO THE PUBLIC GOOD. FAILURES HAVE EXTENDED FROM WALL STREET TO THE MILITARY. FROM RELIGION TO INDUSTRY. HOWEVER MODEST OUR PLEA IN COMPARISON TO THE GREAT QUESTIONS THAT ARE BROUGHT BEFORE YOU, WE SUGGEST THAT THE CONGRESS HAS AN OPPORTUNITY WITH THIS ISSUE TO REMIND THE NATION THAT SOME VALUES ARE MORE IMPORTANT THAN MATERIAL REWARD. THAT SOME THINGS ARE JUST NOT FOR SALE.

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Elliot Silverstein Filmography

- CAT BALLOU
  Best Actor Academy Award for Lee Marvin, Best Editor Academy Award, DGA nomination for Best Director
- THE HAPPENING
- A MAN CALLED HORSE
  Western Heritage Center Award for best western, National Cowboy Hall of Fame
- DEADLY HONEYMOON
- THE CAR
- THE FIRM/FIGHT FOR LIFE (TV movie)
- Over 100 episodic television programs

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TESTIMONY BY GINGER ROGERS

U.S. Senate Subcommittee on Technology and Law

May 12, 1987

Good morning. It's a pleasure to be here and to share my feelings on this very troubling issue. I also speak for the Screen Actors Guild National Board of Directors, which voted unanimously to oppose the computer-coloring of black and white films.

I would like to tell you how it feels, as an actor, to see yourself painted up like a birthday cake on the television screen. It feels terrible. It hurts. It's embarrassing and insulting. It's a violation of all the care and trust that goes into a work of cinematic art.

In the movies, your face is truly your fortune. It is the focus of the art form. So, as actors, we are very concerned about our appearance on the screen. The studios spent months and even years grooming us and carefully developing an image that looked just right on black and white film. We trusted the experts -- the directors, the cameramen, the make-up artists and costumers -- to make us look our very best.

Our appearance and expressions are the tools we use to create a character on the screen. It is a subtle and sensitive art that is completely obliterated by computer coloring.

(CONTINUED)

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The camera captures a certain magic on an actor's face: a sparkle in the eye, the gleam of a tear, the slightest smile or frown on the lips. These are the nuances that go into a great performance. And these are the delicacies that are sacrificed under a smear of pink and orange frosting.

Some people think that this icing on the cake actually improves our appearance. Well, I've seen the new make-up and costumes that they have painted on me against my will, and I can tell you it is no improvement. I never would have stepped near a camera looking like that. No director, make-up man or costumer would have allowed it.

I was outraged when I saw the computer-colored version of 42nd Street, in which I had a supporting role. It looked as if we had all been spray-painted or doused with dye. Those thrilling musical numbers suddenly looked like cheap, Saturday morning cartoons. All of the detail, all of the pizazz, was lost under the new paint job.

How can you accurately color a Busby Berkeley chorus line of 100 beautiful girls with their arms, legs and costumes twirling? The answer is: You can't, and you shouldn't try. All those lovely girls in 42nd Street suddenly had the same orange face, the same orange legs, the same green costume and the same blank look.

(CONTINUED)

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Each individual personality was actually wiped out in one long, sloppy brush stroke. I'm glad that Busby Berkeley isn't here to see what they're doing to his art. It would break his heart to see those brilliant dance numbers done-in by flat, lifeless computer color.

Actors have already suffered many indignities through the unbridled exploitation of our popular films. Our names, our voices and faces are considered grist for the mills of commerce. But a motion picture is more than just a strip of celluloid -- it is the blood, sweat and tears of hundreds of artists. It's our energy and imagination captured by the camera. When that is chopped or colored or clipped -- so am I.

I've spent many years fighting an uphill battle to protect my most valuable asset: my good image. I've learned the hard way that actors have few -- if any -- rights over the use of our work. And that is why I'm here today. This computerized cartoon coloring is the final indignity. It is the destruction of all I have worked to achieve. We must fight it with all our might. We must not let computers casually redesign our cultural heritage.

A dear friend and co-star, Jimmy Stewart, could not be here today, but sent a letter and asked that I submit it to the committee. In it, Jimmy says that his best work is being "washed away in a bath of Easter egg dye." That's precisely how thousands of actors feel. On behalf of all actors and film artists, I urge you to protect our work and let our legacy be remembered as we created it, not as modern mercenaries would rather see it today. Thank you.

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JAMES STEWART

Dear Committee Members:

I'm sorry that I can't be with you today for this important hearing, but I do want to share my feelings on the very troubling issue of computer coloring of black and white films. I've said it before, and I'm glad to say it again to the United States Senate: colorizing is wrong. It's morally and artistically wrong and these profiteers should leave our film history alone.

For 50 years or so, I've made my living as a screen actor in 80 films -- one-half of them in black and white. I pray that they'll stay that way.

Of course, I remember the excitement that Technicolor film created back in the 1930's. It gave the studios a beautiful new option for their screen artistry. But for many creative reasons, we continued to make black and white films well into the 1960's. Some directors, like Woody Allen and Peter Bogdanovich, still choose black and white today and for the same reason: it tells a story in a unique and highly dramatic way. Black and white reduces characters, settings and events to the very essence of darkness, light and shadow.

Every single aspect of black and white production design -- the lighting, sets, costumes, make-up and photography -- are carefully created for the high contrasts of the medium. These designs are not compatible with the very different requirements of color film. Adding a layer

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of color to a black and white film is like painting over something that's already been painted perfectly well. It's terrible. Why do it, except to make some quick money on somebody else's work?

The first film I made after the war was Frank Capra's, "It's a Wonderful Life." Some people call it a "perennial" or a "classic" and that's all right by me. But those classics are the first targets of the colorizers, and the colorized version was shown on TV last year. I watched half of it and had to turn it off. I couldn't get through it. The artificial color was detrimental to the story, to the whole atmosphere and artistry of the film. I felt sorry for the director, the cinematographer, the costume designer, the make-up man and all of the actors.

When I think of Frank Capra's fine cameraman, Joe Walker, and the time he spent on the delicate lighting and built-in shadow of "It's a Wonderful Life" -- and to have that work wiped out by computerized color -- which destroys the delicate shadows and depths of each scene -- it makes me mad.

The scenes were washed away in a bath of Easter-egg dye. The tinting obscured the nuances of expression and character that actors work so hard to create on film. It smudged the clarity of performance and projection that is the goal of all motion picture makers.

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JAMES STEWART

In "It's a Wonderful Life", Gloria Grahame played a character named Violet, and whoever colorized the picture thought it would be cute to color all of Gloria's costumes in that same color: violet. Well, that's art direction after the fact, and an obvious kind of visual pun that Frank Capra never would have considered.

Audiences will always respond to a film's content: the story and the characters. No matter what color -- or lack of color -- it's made in, the audience will love a good film and despise a bad one. The addition of artificial color cannot improve upon the original merits of a film, but it can certainly destroy them.

A certain actor friend of mine named Ronald Reagan is fond of saying, "if it ain't broke, don't fix it." I agree with that kind of home-spun wisdom, and that's exactly what I'd like to say to anyone who wants to paint up my face like an Easter egg. Our black and white films ain't broke, and they don't need fixin'.

If these color-happy folks are so concerned about the audience, let them put their millions of dollars into NEW films, or let them remake old stories if they see fit, but let our great film artists and films live in peace.

I urge the U.S. Senate to join the creative community in our efforts to discourage this terrible process and the windfall profits new copyrights would allow.

Sincerely,

James Stewart

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DIRECTORS GUILD OF AMERICA
NEWS

FOR RELEASE:

CONTACT: CHUCK WARN
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Oral Statement of

Sydney Pollack

Before the

Subcommittee on Courts, Civil Liberties

and the Administration of Justice

of The House Judiciary Committee

September 30, 1987

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Good morning, Mr. Chairman I am Sydney Pollack, a motion picture director and member of the Director's Guild of America. I would like to submit an official written statement by the Director's Guild for the record. Then, if I may, I have a brief oral statement I would like to give now.

I am not a lawyer or a copyright expert but I am grateful to have this opportunity to testify before the subcommittee to express my strong support for the United States' adherence to the Berne Convention. I think, as I hope you do, that the United States should be a part of Berne because, among other things, Berne is <u>the</u> international copyright treaty of real repute. If we want the United States to exert real leadership in the copyright debates then we <u>must</u> make credible our position in the international forum. I think, as I hope you do, that the United States should be a part of Berne because as a leader, as an exporter of some of the best, most influential music, literature, graphic art, motion pictures and software, we ought to be entitled to the same protection as the artists and originators of the other member countries. Our art and our software, our music and our literature and motion pictures are of as high or higher quality as anyone elses and ought to be just as protectable. Further, how do we exert or assume leadership without granting those artists and originators in other countries at least as much protection for their work as they enjoy in

their own country and other countries presently belonging to Berne?

The debate before your Subcommittee, Mr. Chairman, is whether to grant artists the right to protect their works and their reputations. Fundamentally, this is a debate about the value society places on the integrity of artistic endeavors. Webster's defines integrity as, "entire or untouched...an uncompromising adherence to a code or moral, artistic, or other values...the quality or state of being complete or undivided." Our Constitution grants to the individual the right to have his writings protected. The purpose clearly is to motivate the artist to create...to be creative. Because our society is economic based, that protection in the U.S. has been translated primarily into economics -- protection for the financiers and proprietors. But surely that is not the whole intention, surely the underlying foundation for that law is in the spirit of the individual as well -- that individual creativity should be equally rewarded by protection. I think the United States should be a signatory to Berne just to make those statements of artistic support, but our compliance with Berne would be an empty gesture indeed unless Congress clearly articulates the proper standard of protection for creators. Berne's goals are

twofold; the protection of economic rights and the protection of the individual's artistic rights.

The Treaty without a moral rights clause is a treaty with no teeth. To give the copyright holder or proprietor the protection and not assure clear and definite protection of the artist's reputation is an obvious violation of the spirit of Berne. This Treaty did, after all, grow out of a Literary Conference in 1874, chaired by Victor Hugo!

You have heard testimony to the fact that current U.S. law is sufficient to protect the artist. It isn't. You have heard that the Defamation Law, the Lanham Act, and certain state statutes protect the artist. They don't. With the exception of extreme cases of blatant and outrageous misrepresentation there is almost no consistent, across the board protection in the United States against the alteration of an artist's work. If I am a sculptor commissioned to do a work by a committee for a building and they hire another sculptor to alter or change my work, except for five states among our fifty I have nowhere to go to ask for protection. And even in those five states it is debatable that I would receive any. If I am an author of a book who wishes to remain anonymous and the publisher publishes my name, there is no statute that protects me. If I direct a film and the studio that

distributes it wishes, after it's release, to re-select and change the background music, re-arrange the scenes, cut sections of the picture out or tint it all blue, I have no legal redress whatsoever.

Since the contents of all motion picture artists contain clauses signing away the artists copyright to the studios, the clear inference is: sign it away or you won't work.

Let's be quite clear about this, the people who say current U.S. law is sufficient are really saying, "Look, we kind of understand that U.S. law doesn't go very far in protection of artists, what we <u>really</u> want is to be able to get that one-half billion dollars of pirated motion picture money back. But we don't want to get involved in the area of moral rights because that would take some control out of our hands vis-a-vis the artists." But the Berne Treaty has at the very <u>heart</u> of it the spirit of redress for damage done to an artist's reputation.

In the approximately one hundred years (give or take a few) since it's inception, most of our allies have adhered to Berne. The reason we haven't is because of the focus in our copyright law on economic rights as opposed to rights of personality. We're afraid. Are we going to somehow disrupt

the economic rights? Clearly this has not been so in other countries. Proprietor's tell us this will upset all their contracts, that they'll have artists overlooking every editorial decision. That it's unworkable. But it's worked just fine in France, Italy, Germany and all the other Berne countries. Their magazines come out on time, deadlines are met, books are published, motion pictures flourish and proprietors make money. Lot's of it. Again let me try to be very clear: the Treaty creates a distinction between economic rights and the rights of authors to protect their work. As directors, we have no intention of upsetting the economic rights. The marketing, licensing, buying, selling, and theatrical exhibition of motion pictures rests solely with the proprietor. Our concern is subsequent to the time at which the film has begun to live in some form of exhibition, when it has acquired an identity.

How can we say 'Yes, we'll adopt Berne but we don't want moral rights'? That says we want to make the choice but we don't want to pay the price. We want to squeak by. What a sad commentary on our society if we finally ratified a treaty, the very essence of which is protection of individual artists, and ended up strengthening the economic interests of the proprietors and employers and left the artists with the status-quo -- which is minimal protection at best, and in

most cases no protection at all. This is a Treaty that resonates with protection of the artists. That's what it's all about. Yes, we would have joined the Treaty, but in terms of exercising moral leadership, what would we have accomplished? We would have gone half-way. Surely we want a society in which value is put on as high a level as price.

Are motion pictures art? There is no question but that the Treaty regards them as such. Article XIV is entirely devoted to cinematographic art. There is no question that the rest of the world thinks so. The United States has two indigenous art forms, Mr. Chairman, and only two -- invented, implemented and defined by Americans; motion pictures and jazz -- both held in higher esteem elsewhere than here. It's a sad curiosity about us that the motion picture, our own invention, should be more respected in every other country.

Further, Mr. Chairman, they are our only truly uncontested and totally welcome cultural ambassadors everywhere. For much of the world the first and most vivid exposure to American culture and society has been through our movies. We communicate, with even our most volatile enemies, through this universal language. We know there is no present without a past, no future without a present, that our best key to the present is understanding the past -- our greatest hope for

the future -- understanding the present. Motion pictures help us do that. They are the record of who we were and are, what we thought then and think now, the best and worst of us, why we hope and what we dream. They are, at their best, as someone said, the truth at twenty-four frames per second.

And if they <u>are</u> art, and I believe there is no question about that, then who, for heaven's sake, is the artist? Surely not, with all due respect, the stockholders. Clearly the artist or artists are those people whose choices define the shape and texture, the style and tone of what the art is. After all that is what art is made of. Choices. A series of choices -- first imagined, then implemented. Change the choices and you change the impact and therefore the value of the work of art. To exempt motion pictures from protection because they are work for hire, which has been suggested here, is to misunderstand totally the process of creativity, to confuse business acumen with artistic impulses and skill. If you exempt people who are employees then you exempt us, as you would have exempted Leonardo and Mozart, as you would have exempted thousands of artists. Of course you can exempt us from Berne. But if you do that then the art of motion pictures has no artistic protection.

This is an indigenous art form Mr. Chairman. An American art form.

Are we going to leave it outside the umbrella of legal protection?

DIRECTORS GUILD OF AMERICA

NEWS

FOR RELEASE:

CONTACT: CHUCK WARN
818/508-6088

Statement of the

Directors Guild of America

Before the

Subcommittee on Courts, Civil Liberties

and the Administration of Justice

of The House Judiciary Committee

September 30, 1987

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Testimony

Mr. Chairman, the Director's Guild of America is pleased to appear before the Subcommittee as it examines issues relating to United States implementation of the Berne Convention.

The Director's Guild is a labor organization of America's working film directors. In its long history, the Guild has fought not only for economic benefits for its members, but also for artistic rights, the cornerstone of the movie act. For, it is our belief, tested by decades of extraordinary accomplishment, that motion pictures are artistic endeavors. Some succeed brilliantly and are cherished, other cinematic efforts fail. But this is no different from the efforts of our artistic colleagues - painters, sculptors and writers.

The theme of today's hearing on the Berne Conventions is the protection of artists and their works, and we, America's directors, are proud to be a part of this distinguished panel of artists. The Berne Treaty's own language is testament to the fact that cinema is art. And as our friends in England look to provide fairer treatment for artists, legislation introduced by the Thatcher government carries forward that same theme.

Yet, it is a sad curiosity that motion pictures - that great American invention - are not as fully accepted legally as

artistic works here in the United States as they are abroad. These video ambassadors of our culture, of our character and spirit, are treated with more artistic respect in Europe, Asia and other continents, than in their own home.

Perhaps this is so because films are popular items of a mass culture. But we reject this notion. The two great indigenous contributions from the United States to the arts, motion pictures and jazz, are enormously popular throughout the world. Did the fact that Shakespeare's plays were performed to standing room crowds in Elizabethan England make them poor literature?

The debate before your subcommittee, Mr. Chairman, is whether to grant artists - including film directors - the right to protect their works and their reputations. Fundamentally, this is a debate about the dignity with which society regards artists and the value society places on the integrity of artistic endeavors.

The Director's Guild believes that the U.S. should be a signatory to the Berne Convention just to make that statement of artistic support because Berne is fundamentally a statement of the worthiness of artists and their work. But our confederation would be an empty gesture unless the

Congress clearly articulates the proper standard of protection for creators. The moral rights provision of your bill, Mr. Chairman, embodies that standard and we endorse it.

As the Berne Treaty crafts an international system for the protection of copyright holders and copyrighted works, it reflects, in the words of Ralph Oman, Register of Copyrights, to this subcommittee on June 17, "many of the most deeply held desires of authors and artists for recognition of their economic rights in their creations."

But economic rights are fools gold to creators themselves if artistic rights are not respected. The unique relationship between an artist and his or her creation is nullified if anyone else can claim authorship or if the work can be materially altered without regard to its unique, aesthetic presentation. This natural connection between economic and artistic or moral rights is what the Berne signatories recognized in 1928. We believe artists rights is at the heart of the treaty -- it gives the treaty its special character and its moral tone. Your bill, Mr. Chairman, is more faithful to the letter and spirit of Berne than the Leahy or Administration bills precisely because it contains specific moral rights language.

We have read with interest the testimony of witnesses from business and government to this subcommittee, but since, in our view, the Berne Treaty is really about artists and their rights, the subcommittee is to be applauded for hearing directly from artists about a matter that concerns them, first and foremost.

Most of the previous witnesses argued for U.S. entry into the Berne Convention, while explaining that U.S. law is supple and meets the minimum standards of moral rights required by Berne.

These witnesses say the Lanham Act is sufficient, or that U.S. case law points the way, or that state statute will protect the author should he or she be aggrieved regarding the rights of paternity and integrity.

We could not disagree more. We are not a legal society, but we have heard from those we respect in the legal community that the remedies of the Lanham Act are insufficient to meet the goals of Berne. And while case law might evolve toward greater protection for artists, that claim is largely speculative. In fact, the weight of cases runs in the opposite direction. Even the case most often mentioned,

Gilliam v ABC, the Monty Python program, has not spawned case law progeny to protect against artistic mutilations.

No, we believe that only Congress can lift American artists rights onto the proper plane of protection by passage of the Kastenmeier bill.

Those who oppose this action -- but who nevertheless want to see the U.S. ratify the Berne Treaty -- have devised the "chicken little" theory. According to this theory, any explicit bow to moral rights will open the floodgates of litigation. Artists and creators, who have heretofore conducted amicable relations with buyers, syndicators, licensors and publishers, will suddenly condemn in court every cropped photograph, every edited work. The system by which artistic products are marketed and sold will be thrown into chaos.

But the experiences of other countries do not bare out the "chicken little" theory. Countries where national legislation provide for artists rights have not had their court dockets inundated with moral rights cases. France, a country known for the most developed national legislation regarding the protection of artists, has maintained high

artistic quality without sacrifice of its business or judicial systems.

Of course, experiences vary from country to country, and France or other countries in Europe cannot serve as perfect models for the litigious United States, but we know Congress is too wise to accept this "chicken little" approach to legislation. After all, it is not entrepreneurs alone that rely on the developed systems of publishing, marketing, licensing, reproducing, and syndicating artistic materials. Artists rely on these systems, too.

Film directors for whom I speak, like other artists, view this moral rights debate as a question of cultural honesty. We beseech the Congress to insure that the works we created, that have been published and that bear our name, are maintained in that fashion - unless we agree to change them. This is at the heart of the rights of paternity and integrity, moral rights explicitly set forth in the Berne Treaty and in Section 106a of the Kastenmeier bill.
Our goal is made more urgent today because motion pictures are being offered to the public as the original version when, in fact, significant alterations have been made.

The most publicized of these changes is colorization of original black and white films, but it is not the only one. Movies can be compressed in time by having their footage speeded up so as to fit into a designated time slot. By this process, the director's choices about the pace and the visual rhythm of the film, an essential artistic element, are co-opted by technicians. Panning-and-scanning, a process which compresses visual images from a wide screen to a much smaller television format, involves a technical sleigh-of-hand in which someone - not the director - arbitrarily edits out visual material he deems unimportant or irrelevant.

The computer coloring of black and white films, which has jeopardized America's film heritage, galvanized the Director's Guild to protest. American film masterpieces, that had been shown for years in their original black and white, are being altered and then exhibited or sold to mass markets. Fundamental, creative decisions designed to enhance the dramatic effect of black and white movie making are being colored over. In Orwellian fashion, the machines revise film history, trampling upon the honor and reputation of the great directors who created those works. To us, this issue crystallizes the moral rights debate, and offers the spector of a director's reputation being damaged in the eyes of future generations.

While cynics dismiss our complaint as an economic dispute between creators and producers, they ignore the moral heart of the matter. The commercialization of colorized films has sparked a new level of concern for the protection of motion pictures and the reputation of those that created them. Only a few months ago, the late John Huston gave a press conference and deplored the colorization of one of his greatest films, "The Maltese Falcon." An impertinence, he called it, as great as splashing colors on the Mona Lisa. When Woody Allen testified at a Senate hearing in May, he said that he chose to make "Manhattan" in black-and-white, and that color would be wrong for his vision of that film. "Colorizing" that movie would destroy his work, making the film something never intended. While Woody Allen may have some right under his contract to prevent coloring "Manhattan," John Huston had no such protection. Yet, we believe, the law should treat them equally. Is there not a higher societal motive to be served in preserving these movies, and presenting them as they were envisioned? Is there not a higher moral standard to reach here?

The director's grievance is not with technology. After all, movies are an art form based in 20th century technology. Our grievance is with those who would purposefully change motion pictures from what they were when they were released for

exhibition without the consent of the primary authors of the film. The technology available to these people is moving at such a pace that the entire archive of American film is under threat.

This is the point where our concerns merge with other creators, such as those in the fine arts, whose works may also be defaced. And this is the point where it becomes powerfully clear that explicit <u>legal</u> protection is required to insure that art works are not arbitrarily altered contrary to aesthetic intent. Gratefully, the Berne debate provides an opportunity to examine this question in the proper context of moral rights.

Section 6bis of Berne provides:

> Independently of the authors economic rights, and even after the transfer of said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

To the extent that art works, even collaborative works like films, are the vision of an individual, and become part of his professional resume, the author deserves the right to be

identified with and to protect his works, thereby establishing and preserving his own reputation.

We recognize the statement of moral rights raises concerns of the producing companies, and perhaps some of these fears can be put to rest. Our interest is that the finished work - the released motion picture - must be protected:

(1) "Moral rights" would entail no changes whatsoever in the production phase of movie-making. To insure this, we recommend that statutory language be crafted to clarify that moral rights would obtain only after theatrical release.

(2) "Moral rights" would be alienable. This is in accord with the Kastenmeier's bill approach, and, we believe, with traditional American contract law. Some of my colleagues, who have made film in black and white, have stated they would have no objection to their work being colored by a computer. Other would. The choice should rest with the film's creative authors - the principal director and screenwriter.

(3) The Guild seeks no alteration of the traditional employer/employee relationship that is

characteristic of relations between producers and directors. As far as copyright ownership, the work-for-hire doctrine should remain expressly in tact. Only as it relates to Section 106a of H.R. 1623, would we seek a modification. Moral rights, not economic rights, would be provided the principal director and principal screenwriter.

(4) The scope of moral rights language in H.R. 1623 may be giving rise to unfounded fears, and so we would like to work with your Committee staff and others who might wish to see more specific language. However, we do not believe the development of statutory language is so complicated an endeavor that it need retard the timely consideration of enabling legislation.

(5) We also agree with those who conclude that the Treaty is not self-executing.

Mr. Chairman, we understand that explicit moral rights language may break some new legal ground based on legal theory more fully developed in Europe. Some witnesses have argued that moral rights is a European development, alien to U.S. law, and that U.S. law cannot accommodate itself to such notions. One then ought to look at the enormous range of legal systems represented by Berne member nations and ask how

these systems can be more accommodating than our own. The answer to this question may be the near-universal recognition that artists and creators are not ordinary entrepreneurs and that their contributions should not be regarded solely as a matter of commercial concern.

But, we believe, American law is and should be dynamic and responsive. Indeed, the preponderance of views to the Ad Hoc Working Group and to this Committee is that U.S. law does recognize artists moral rights. The argument here is between those who think U.S. law sufficient and those who do not.

However, we are skeptical that the Administration, or the MPAA, really believes U.S. law currently provides moral rights protection sufficient to satisfy the spirit of Berne. They do not favor your language, Mr. Chairman. They are not in favor of stating directly what is presumed to be there in the law already.

We believe many of those contending U.S. law is currently sufficient are really saying that artists should not be given these rights. They seek the benefits of the Treaty, but do not accept its obligations. We believe the United States should place itself in the role of a leader on this issue, and not "squeak by" on the moral rights issue, to borrow

Professor Kernochan's phrase from testimony last year. How could it possibly be leadership, Mr. Chairman, to adopt this particular treaty but, in the process, disregard the moral heart of Berne?

Mr. Chairman, explicit recognition of an artist's moral rights is long overdue in the United States. We are a country rightly proud of its creativity and ingenuity. Our artists are in the world's front rank, the groundbreakers in their fields. America's artists deserve the decent respect that explicit moral rights language would bestow, and the Treaty provides us this opportunity. We also believe that the spirit of the Treaty demands this from America.

For our part, as artists, we would ask the subcommittee not to heed the arguments of cynics or the faint of heart, but to move ahead and pass this legislation with its moral heart in tact.

STATEMENT OF FRANK PIERSON

Representing the Writers' Guild of America, East and West, which represent as a labor union some 8,500 writers of motion pictures and television. With rare exceptions, all American motion pictures and television programs are written by members of these Guilds.

SUMMARY:

1. We wholeheartedly agree with joining Berne. As authors we share with the employers, production companies, distributors, publishers and their investors, the need for improved worldwide copyright protection which Berne will provide.

2. We believe moral rights are desirable; we believe they are necessary.

3 We further believe that moral rights do not pose a threat to current working practices in the motion picture and television field, nor in publishing. A moral rights provision in copyright law would lead to a more productive and mutually supportive relationship between authors and their employers, distributors, publishers, and editors, by clarifying and balancing the rights of all parties, thus reducing abuses that have been and remain the source of constant friction, suspicion, acrimonious labor negotiations, and unnecessary litigation.

4. The very limited moral rights embodied in Berne are so much less than what we would ideally advocate as to present a non issue, relevant to whether or not we join Berne.

5. We vehemently object to excluding "work for hire" from provisions of H.R. 1623.

Before the Subcommitee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee.

September 30, 1987

Mr Chairman, it is an honor to be asked to appear before your Committee and thus share so directly in the process of our government. I thank the Committee for the opportunity.

We of the Writers Guild of America East and West, join the Director's Guild of America's statement, which has been given you, as our formal argument on these matters.

We also agree with the MPAA in their arguments for the passage of H. R. 1623. They argue eloquently and we have nothing further to add, except as to moral rights. The MPPA sees no threat in the limited moral rights issues raised by joining, nor do we, but for different reasons. As you will see we differ entirely from the Coalition (Mr. Ladd's statement) on both issues.

With due respect for the paternity rights of Senator Leahy, we do not wish to engage in - his words: "a contentious distraction" over moral rights, but we would like to address this area of the bill both to assert some home truths and to allay fears and anxieties expressed by others.

We believe that there is more to Berne than economic benefit; we believe it will affirm and strengthen what limited recognition moral rights are given in American law. The Writers Guild of America, which is a union of some 8,500 writers of motion pictures and television, is actively working to expand these rights in the working practices of our business. We have got some hard won recognition in this area, and the industry continues to thrive, unlike the sad situation in France, where, if I read Mr Ladd and the publishers correctly, the nation, society and telephone system have collapsed, and children are talking back to their parents, all because of moral rights.

We believe the effect of Berne's moral rights requirements upon our real life working situation will not be apparent. We wish it would be, but it is a paper tiger. Berne simply doesn't go far enough.

I am not a lawyer. I am a writer and director, and I also worked as a correspondent and writer for Life and Time magazines, published by Time Inc., one of the Coalition of publishers on whose behalf Mr Ladd argues. I also write occasionally for newspapers and magazines. I testify here from my real-life real-time work experience, and from years of serving on negotiating committees of the Writer's Guild. These union negotiations over "creative rights" deal in different words with what before this committee are called rights of paternity and integrity.

For some fifty years now - by way of example - the Writers Guild has controlled and administered the right of paternity -- that is, determining who gets credit on screen for writing movies and television. We had to fight for that right in days when producing companies arbitrarily assigned credit to anyone they fancied; themselves, their wives, their mistresses or their dog, regardless of who had actually worked on the screenplay.

Our efforts to wrest credit determination away were denounced as a communist plot, as interference in the relationship of employer and employee, as forbidden by the copyright law, because the employer was the author, as ruinously expensive, as unnecessary, and as a communist plot.

In practice our control over paternity rights has served to protect the companies from exposure to endless litigation. It has brought order and justice into what was a legal and artistic jungle. I believe if we proposed to return this control to the companies they would go on strike. They would say it would be ruinously expensive, impossible to administer, and a communist plot.

It is certainly expensive, one of the most difficult services the Guild renders its members and the companies, and our willingness to continue the service is testimony to the importance the moral right of paternity assumes to the screen and television writer.

It is also a tacit recognition by the companies of the MPAA that this right inheres in the real author, not the fictional 'author', deemed into being by the copyright law. The language of their statement before this Committee demonstrates that. (See P.1, Par B,(2) of their statement.) Why would they demand a statement that no author has a paternity right, unless they recognize they have no defensible claim to authorship, except the precarious reasoning of the copyright act in this regard? I imagine they believe they should have a paternity right. Where would they derive it from, except from the actual author of the work made for hire?

Publishers argue that the purpose of copyright law is solely economic incentive, and argue from that, that there is no more fundamental purpose to it from which to derive a moral right, either paternity or integrity.

But the language of the Constitution grants power to Congress to write laws to "promote the Progress of Science and useful Arts." For what purpose do we promote the progress of science and art, other than the enrichment of

the national life, both in advancing new products and industries, and in broadening our intellectual and artistic horizons? This takes us far beyond the narrow economic ground upon which they rest their case.

But let us examine the copyright law, which says that in "works made for hire, the employer is deemed to be the author." This is a clever way of getting round the difficulty the Constitution poses for employers; the Constitution says flatly the founding fathers wished to secure to artists and inventors the rights to their creations. By simply saying "but - if the artist is paid, the employer is the artist," does not make it so; or do they believe the Pope painted the Sistine Chapel ceiling, and Wagner's operas were composed by Mad King Ludwig of Bavaria?

For the serious artist and author economic incentive is not the issue. The serious artist and author and scientist - those whose creations are the most profound and valuable, that change history, enrich nations, start new businesses - those the Constitution most emphatically addressed - will work at their art or science regardless. These people of genius create out of an inner drive beyond reach of economic incentive; the economic benefit of copyright merely frees them to do what the Constitution says it wants them to do.

It frees them to create - if they can find a market for their work. It ensures them that they will have the time and the resources to work full time at their art, their science, their invention, to all our benefit. And even so most of them have to work at other related jobs to support themselves and their work, as professors, teachers, editors; or as paid employees for companies that exploit their work.

At issue here is the adamant position taken by these employers that not only does the work done belong to them, but they are the author themselves, as the copyright law states.

It is the position of the employers that they may do whatever they wish with what they have paid to have done. Ted Turner said it in the simplest fashion: "I own the damn things, I can do whatever I want with them." But does it follow that the Pope can repaint the Sistine Chapel ceiling?

I put it to you that if you had in your family a wealthy old man with a fine collection of Rembrandts which in his senility he began one by one to throw in the fire, you would swiftly take appropriate steps to have him declared incompetent and take his Rembrandts away from him and put them where they would be safe.

This is not a mere fantasy for sake of argument. Some years ago, Red Skelton, who owns outright the copyright and prints and negatives to several hundred of his old television shows, proposed to have them burned upon his death.

He disregarded the fact that a staff of writers had their names on the prints and negatives, that their working lives had largely been spent working on that show: these episodes were a major part of their lifetime output, upon which their reputation depended. And for a writer in our business his or her reputation is the basis upon which the writer works or does not work. It's not a shoeshine and smile; it has a hard measurable economic value; certainly it does to the writer involved.

It happened also that these writers had worked for less than they would have commanded elsewhere because they expected the residuals from these shows to have long lasting value in syndication. Skelton has never let them be syndicated, thus depriving them of the benefit of the risk they had taken with him. Now they saw any hope of recouping this lost income itself being lost.

The Writers Guild was able to help resolve this issue because of the written labor contract that covered these shows, but such instances demonstrate why moral rights - rights rooted in the recognition of the actual creator, not the employer - need firmer footing in American law.

A recognition that something created for the common good, as the Constitution mandates, becomes part of our common heritage, and is owned in a sense not only by the copyright owner but by the nation as a whole. It is a part of our cultural wealth, we pass to our children and their children.

What of those cases in which work for hire is withheld from the marketplace? Is this done? It is the corporate policy of most Hollywood studios at present, even when the writer is willing to repay them, with a profit, from another producing source.

I am talking about the screenplay itself here, not the finished motion picture. It may help to understand the peculiar way this all works. There are two common ways in which a movie begins. The employer, usually a producing company or "studio," buys an original screenplay, which the writer wrote alone, on speculation, under a sales contract which is written as a "work for hire" employment contract, administered by the Writer's Guild. The sales price is defined as compensation for work done and for any further rewriting.

Or the studio hires a writer to write the screenplay based upon an idea the writer may have suggested to the studio, or that the studio provided to the writer. Adaptations work in the same way. The writer rewrites in consultation with the studio until a director is employed (by the studio) and then the writer and director work together until the final screenplay is finished, and the process of actually making the film begins.

Many - in fact the vast majority - of commissioned screenplays are never produced. They are not made for many reasons; because they can't be cast at the moment, because they are too expensive for the studio, because of disagreements over style or content. There are hundreds of unproduced screenplays which everyone readily agrees are excellent screenplays. They are owned by the studios who will not produce and will not let them go.

We have for years tried to achieve a meaningful reversion of rights clause in our contract, so that an abandoned screenplay after a reasonable period of time can be bought back by the author, and be produced elsewhere. (We have never asked for free reversion, though only because we believed it was unattainable.)

One would think the studios would welcome this as a means of ridding themselves of red ink. We are talking about considerable sums here. A half a million dollars is a median figure for the investment in an abandoned screenplay. But they resist it in negotiation and they reject it as a matter of policy at most major studios today. A quote, from the CEO of a major studio: "We don't want to make this picture, and we don't want anyone else to make it either."

We believe it should be a moral right for a screenwriter to have his or her work produced regardless of the wishes of the owner, in the event the owner doesn't want to produce the picture and provided the owner will be reimbursed his or her costs. Is this an infringement of the owners' rights? It is certainly a rebalancing of the rights of creators and "corporate authors," which are badly out of balance, on the employers' side.

Amd it is (we believe) the true expression of the Constitutional mandate, which was to promote the progress of science and arts; to get these works out into the marketplace of commerce and of ideas. How does the willful supression of works made for hire promote progress of the arts?

Most players understand and play by the rules of the game as long as the rules are evenly balanced; it is only when the

rules are written so that only one side can win that players must break the rules, and the endless round of litigation and complaint begins, and extends into a bitterness that makes our negotiations with these companies a needless agony for both sides. If you think I am being melodramatic in this language I invite you to sit at our bargaining table. We believe further that recognition of moral rights in these limited ways will promote trust and mutual respect that will make things easier for the employers.

What would happen in the workplace if moral rights were fully recognized? Even in France, nobody disputes the right of the employer or the commissioner of a work to define what it is he or she wants. The Pope could order endless changes, more cherubs and less seraphim, more seraphim and less cherubs, and Michelangelo could argue, win some, lose some, accept the Pope's direction, or quit.

At issue is only what happens after the work is done and paid for. It is at that point that Michelangelo's position in the world as an artist depends upon the integrity of the work. And the work now belongs to God and his country. Read the Constitution's words and think about what it is those men had in mind. It was not merely profit and loss.

I think some of the hysteria induced by the prospect of moral rights, among the publishers especially, is the idea that we wish to exert these moral rights in discussions and arguments prior to publication. Having worked round the clock putting a newsmagazine to bed, I can tell you (and this is the only place where I agree with Mr Ladd) the result would indeed be madness. This is exactly the time when the text must be fluid and the creative process be kept open and flexible. The editor must retain his or her essential power to cut to length and amend for style. And anyone who works for Time expects to write in Timestyle; to insist upon English would be impertinence.

We have no desire to redefine this part of the relationship between employer and author; in fact in good relations, where there is mutual respect, the conflicts between them can be invigorating and creative in themselves. No one wants to cut himself off from creative criticism and ideas; the steel needs the flint, and flint, the steel, to make fire.

Moral rights begin at the point when the work is done; when the employer and the author have worked out their differences and compromises and settled upon the finished work. In film this is the first exhibition for a paying audience (excepting previews to test audience reaction); in television it would be the delivery of the film or tape for

broadcast; in publishing it would be the sale of the first copy.

It is from that time, that if the work is altered or defaced in a way that makes it ugly, or obscene, or gives a meaning opposed to what the artist intended, it should not be presented as his or her work. The Lanham Act does not provide this protection, as it only allows a disclaimer.

It does not protect the integrity of the work, which is its' meaning. It does not allow the author the right to either allow the changes or effect the changes him or herself.

The Writers Guild presides over the use of pseudonyms to protect writers whose work has been altered in ways demeaning to them. (Another right we won over cries it would destroy the credibility of film credits.) The Director's Guild has won in negotiation the right for directors to supervise the cutting of their pictures for television. (Over cries it would...etc.). We believe we should have - in fact we need - the foundation of law to support our negotiated agreements in these areas.

All of these gains in moral right were achieved to the shrill protests of management that the delays and problems created would sour working relations, clog administration, ruinously increase costs, be impossible to police, destroy the marketability of films to television, etc. The industry has survived, in fact it flourishes. In reading the arguments of the publishers I hear echoes of the same doomsaying, and recognize it for what it is.

They forget it is not just their business, it is mine as well. They are my partners, and my sponsors; I do not envy them their job in any way, it is enough to do mine. I need them to prosper, I wish them well, and will not do anything to unduly hurt them, because I hurt myself. But we need a balance that is missing.

They argue that to join Berne is to encourage the forces working towards a stronger moral rights in law, by which they seem to imply that if we do not join Berne these forces will desist. Nothing could be further from the fact. We of the Writers' Guilds, and our allied Guilds and unions and organizations of creators in every field will fight to lodge firmly and unequivocally in law the moral right of the artist and inventor to be identified with his or her creation, to enjoy directly its benefit (and lease it or rent or sell it at will), to be sure it is not altered and defaced or made to mean something other than what it was meant to be.

There is something else going on here. It is the function of the artist and author in society to define the present for the future; the artist creates our history and heritage. The moral right defends our history from revision, from the whim of fashion or the malign distortion of the mad or corrupt or ideologically motivated censor.

It is the ultimate purpose of moral right to protect the heritage of our nation that resides in those works of art, those ideas, books, paintings, sculptures, music, motion pictures and buildings, those things that express our national character and are what we bequeath to our children, and their children, as the essence of our America.

It is for these reasons, Mister Chairman, that although we embrace this bill we also fervently petition you to allow what small moral rights benefits will result include authors working for hire.

Thank you, Mister Chairman.

steven spielberg

September 29, 1987

Mr. Chairman and Members of the Subcommittee:

Although I am unable to be present in person, I would like to add my name to those who enthusiastically support Congressman Robert Kastenmeier's bill to allow the United States to sign the Berne Treaty.

However, I must take strong exception to the legislation's proposed exclusion of protection for "work for hire", such as that performed for motion pictures.

To single out for exclusion the artists responsible for one of this country's indigenous and most vital art forms is to seriously undercut the spirit, if not the validity, of the Berne Treaty. It is time to recognize the moral rights of those whose lifelong creativity has made this medium the most popular and powerful form of self-expression in world history. Those who create motion pictures are as fully entitled to artistic protection as people who work in the other arts, yet protection has been denied them. The debate on the Berne Treaty presents a special opportunity for the United States to finally recognize the importance of its artists.

Our film heritage has enriched not only America but the world. The directors and writers of the past and the future deserve and need moral rights protection. I cannot urge strongly enough that it be granted.

Steven Spielberg

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Directors Guild of America, Inc.

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ELLIOTT WILLIAMS

24 September 1987

Dear Elliot,

I am writing to report on comments I heard from various important European directors during the last few weeks. They are well aware of what is at stake when the new US copyright bill becomes law.

As you know "the Barcelona Manifest" was signed not only by most of the top American directors whom we were able to reach in so brief a time but also by men from all over Europe and Japan, directors of the stature of Fellini, Kurosawa and many others who are appalled at the idea that under the present US law they are <u>not</u> regarded as the authors or even co-authors of their own pictures and that therefore their work has no protection whatsoever in the United States.

I was very much impressed by their approval of the DGA's stand against the commercial interests which threaten in the long run to destroy the most valuable medium of the 20th century.

All 700 of the foreign signatories share our opinion that this situation is immoral and obsolete and that it should be put right according to the facts: directors are the artistic authors of their films, and should be regarded as such within those provisions of the Berne Convention which concern the inalienable moral rights. This should apply universally, regardless whether or not the directors are "working for hire".

.../

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-I would be very much obliged if you would submit this report as evidence at the Congressional hearing on 30 September. As an American director I am corroborating the position of a worldwide group of directors. Undoubtedly there would be many, many more signatories had we been able to reach them in time.

Best regards,

Fred Zimbalist

Mr Elliot Silverstein,
c/o Chernikoff & Company,
1921 Sunderland Place, N.W.,
Washington D.C. 20036,
U.S.A.

Elliot Silverstein
Chairman
President's Committee
Directors Guild of America.

From David Lean
Sun Wharf
Narrow Street
London. E.14.8QD.

To whom it may concern.

In a civilised society I do not believe an owner of a work of art is entitled to tamper with the creation he has purchased. It is generally conceded that the work of artists, from ancient times to the present day, should be preserved and presented as they were conceived.

Because we are a new art form, and have no traditions, people who have had nothing to do with the artistic creation of a motion picture can buy it and alter it at will. Television is giving a new impetus to these modern vandals. They are already hacking up our most recent films, in many cases cutting into the original negative. Very soon it will be impossible to see some of our [illegible] as they were intended. Because today, with the new film stocks, they could be preserved for generations in their original pristine condition.

As might be expected, France is the only country which protects her films against these commercial onslaughts. French directors are recognised as authors of their work. In the United States and Great Britain no such protection exists.

One of the reasons for this archaic state of affairs is that it is not generally recognised how much the creative side of the so-called film business has changed in recent years. The Goldwyns, Mayers and Selznicks have gone. Whether one admired their creative talents or not, they chose their subjects, scoured the world for talent, had a genuine feel for the medium, nursed their films through their first runs and wined and dined the press. And they were the boss.

Todays producers are a different breed. They are organisers, production managers and would-be impresarios. You see them on the credit titles as line producers, executive producers and associate producers. Sometimes they are joined by the odd star who fancies the title. Whatever they call themselves they cannot be regarded as anything but fringe contributors of creative ideas.

Motion Pictures are created by the men and women who write and direct them.

We, the living, together with Griffith, Chaplin, Lubitsch, Welles, Wyler, Ford, Huston and many others have an author's moral right to the protection of our work. Will you please give it to us?

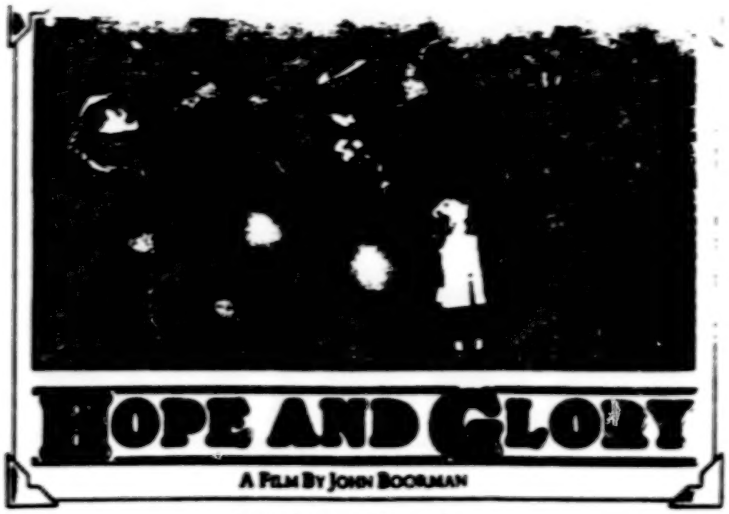
Sincerely,

David Lean.

David Lean.

September 1987.

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Elliott Silverstein Esq.,
c/o Larry Chernikoff
1921, Sunderland Place,
WASHINGTON DC
20036
U.S.A.

25th September 1987

Dear Elliott Silverstein,

Griffith, Ford, Wells, Kazan, Wilder, Zinnemann, Hitchcock, these and many more have charted the history of a nation, explored the frontiers of its psyche, sought out the very soul of America.

Not these, nor any of us lesser filmmakers have any rights over our work, no means of protecting its integrity, no way to defend it against cutting, scanning, colourization and other acts of barbarism.

I urge the US of A to fall in line with other civilized nations and join the Berne Convention and recognize the moral rights of authorship.

Yours sincerely,

JOHN BOORMAN

Dicrated by Mr Boprman
and signed in his absence.
He is out of the country.
NJP



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Société
des
Réalisateurs de Films

Paris September 22, 1987

Jean-Daniel Pollet
215, rue du faubourg Saint Honoré
75008 Paris
45 63 96 31

Dear Fred Zimmermann,

It is with a genuine satisfaction that the Society of Film Directors, of which I am Président, is told that, following the very recent decisions of the Supreme Court of your country related to the right of consent, the American Congress is on the brink to amend your present legislation as far as the protection of the Author's moral right is concerned, thus enabling the United States to sign the Berne copyright treaty.

As you very well know, the French legislation played a "pioneer" role in this very domain, and under the impulse given by the Authors, and film Directors particulary, the Law was even more improved last 1985, allowing our Films to keep clear off being mamed (material alteration and cuts).

However, the strength of multimedia holdings and "mass production" being that important, we have to constantly fight new menaces.

Therefore, I will never highlight enough the virtues of the Amendment H.R. 2400 introduced by Congressman GEPHARDT and also underline enough the necessity that all regulations he offers should be adopted.

To accept and pass the bill of Congressman KASTENMEIER would actually, because of that "work for hire" exclusion clause, ruin most of the decisive and historical progress you are to achieve.

association régie par la loi du 1er Juillet 1901

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Definitely backing you up with all our support, I remain.

Yours sincerely,



Bertrand TAVERNIER
President of the Society
of Film Directors.

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September 24, 1987

Chairman of the President's Committee of the
Directors' Guild of America

1. In American law film directors are not regarded as authors or even as co-authors, King Vidor, John Ford, Orson Welles and William Wyler notwithstanding. They are therefore defenseless against the continuing amputation, mutilation and colorisation which are disfiguring our films and preventing audiences from seeing the original versions.

2. In the seventy-six member countries of the Berne Copyright Convention certain controls exist which stipulate the inalienable moral rights of authors, regardless of whether or not they had been working for hire. Government legislation would therefore seem to be the only possible protection of the work of film directors. As a concerned non-American writer and director I take the liberty of pleading most respectfully for the need for protection of our work, first by considering the possibility of joining the Berne Convention and secondly to introduce film directors and film writers as authors or co-authors into American law. Perhaps this would be a means to check the horrendous abuses which, unless checked, will eventually destroy the most valuable medium of the 20th century.

Harold Pinter

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LONDON NW3 4YB
01-722 6848

Mr. Elliot Silverstein,

25th September 1987

Chairman
President's Committee,
Directors Guild of America,
7950 Sunset Boulevard,
Los Angeles, CA 90046
U.S.A.

Dear Elliot Silverstein,

Like all European film directors, I am strongly behind you in your fight to establish and strengthen rights of authorship for film makers in the United States. I am sure you will present the case for the directors' moral rights with eloquence and conviction.

But there is another side to this issue: the question of the <u>public's</u> rights.

The vast majority of the audience sees movies of the past (and increasingly of the present) on television. For them, the T.V.version <u>is</u> the film. It is the public that needs protection from being offered mutilated versions of creative work.

The only practical way to provide this protection is the kind of legislation that you are advocating: adherence to the Berne Copyright Treaty and the introduction of a strong mandatory moral rights clause.

All power to your elbow!

Yours sincerely,

Karel Reisz

KAREL REISZ

9 STIRLING MANSIONS · CANFIELD GARDENS · LONDON N.W.6. 3JT

As a film director of more than 30 years' work in the industry - in Britain and recently in the United States - I would like to support, most seriously and urgently, the proposal that the United States should join the Berne Convention.

It is now generally agreed that the true authors of any motion picture are its director and writer. Theirs is the statement and theirs is the creative responsibility and achievement. Yet today, without the protection of the law, we find the integrity of our work at the mercy - as it has never been before - of manipulation by interests whose only motivation is commercial exploitation.

The cinema is the great original art of the Twentieth Century. The great film makers of our time rank with Mozart and Michelangelo, with Whitman and Melville, as great creators and communicators. Yet the works of film artists are vulnerable, as are those of no other art, to spoliation and deformation in the name of commerce. Creators of film in the United States - like their colleagues in Great Britain - desperately need the protection of the Law. Such protection is surely the obligation of any society which claims the name of civilised. May the United States provide it: and provide also an example which we in Britain may urge our government to follow.

Lindsay Anderson

LINDSAY ANDERSON

24 September 1987

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Directors Guild of America, Inc.

PETITION TO THE UNITED STATES CONGRESS

ON THE ISSUE OF MORAL RIGHTS

September 30, 1987

We are a group of Non American film directors.

We wish to share our concerns with you regarding the alteration of motion pictures after they have been released. The most recent example of this alteration is the coloring of black-and-white films which is currently debasing a number of classic American films.

Nothing communicates to the world, so vividly and completely, images of your country in all of its staggering complexity as do motion pictures and nothing compares to motion pictures as an ambassador of the freedom Americans enjoy in explaining all aspects of your national existence.

It happens, ironically perhaps, that we in Europe regard motion pictures as artistic endeavors in a way not exemplified in the country that has contributed so much to the art form - the United States.

As you know there is a great regard and long-standing interest in film preservation in a number of European countries and much greater legal protection afforded to a completed motion picture as an integral art work than in the U.S. It is our understanding that U.S. law regards motion pictures, by and large, in economic terms not with any artistic or artistic right dimension. But, it is also our understanding, that changes may be made by the U.S. Congress and Administration and that hearings are beginning in Washington D.C. on a Bill introduced by Congressman Kastenmeier that could lead to the U.S. joining the Berne Convention. This means that there is a possibility that a satisfactory moral rights provision will be adopted. We know there is also legislation proposed by Cong. Richard Gephardt that would protect films from arbitrary alteration. We applaud both these proposals and any others made in the American Congress to establish protections for American film artists and America's extraordinary film heritage.

We have signed this document to persuade you that any positive action you take in support of American film artists will have an equally positive effect on the international film community.

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VEVAM

Vereniging ter Exploitatie van Vertoningsrechten op Audiovisueel Materiaal
Lid CISAC

With compliments of the VEVAM
Avec les compliments de VEVAM
Met de complimenten van de VEVAM

Algemeen secretariaat VEVAM Nic. Maesstraat 68 1071 RC Amsterdam
telefoon (020) 76 43 20 telex 14474 films nl postbus 581 1000 AN Amsterdam

on behalf of all VEVAM-members-Directors

Amsterdam, 7 juli 1987

W. Verstappen
VEVAM Vice President

(list of members attached)

Passeig de Gràcia 47, 3er. 2a. 08007 Barcelona
Teléfon 215 24 24

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DATUM: 06-06-87 Bl

numm.	n.a.w.	voorletters/telnr.	rayon	branche	ko
1114	GRASVELD EIKBOSSERWEG 38 1214 AJ HILVERSUM	FONS	1	02	C
1113	GREINER OOSTERWEG M 35 1482 AK PURMER	ROB	1	02	C
1483	GROOTELAAR BOOGGANG 35 7552 JZ HENGELO (O)	B.H.H.	12	02	A[
1089	HAANSTRA RUYSCHSTRAAT 50 HS 1091 CD AMSTERDAM	RIMKO	1	02	C
1127	HAMER TURKOOISLAAN 36 3523 GM UTRECHT	E.H.H.	1	02	B
[illegible]	HANSSEN RHIJNVIS FEITHST 15 3H 1045 TT AMSTERDAM	HENK P/A NED FILM ACADEMIE 185006	11	02	
1438	HASEBOS BAKKERSWEG 2 3761 BG SOEST	WOUTER M. 02155/25039	1	02	C
1242	HASTE[illegible] [illegible] 2011 CX HAARLEM	P.C.A.	10	02	
1359	HE[illegible]LINDA [illegible] 1165 MP HALFWEG	G	10	02	
1129	HEMERT DE MAREN 29 8584 VP HEMELUM	RUUD VAN	1	02	C
[illegible]	HE[illegible]BERGEN [illegible] [illegible] AMSTERDAM	LO VAN	10	02	
1258	HE[illegible]ELINK U[illegible] [illegible]	D	10	02	
1040	HEYDE VAN BREESTRAAT 119 HS 1071 ZK AMSTERDAM	N. VAN DER	1	02	C
1149	HEYNEN TOLSTRAAT 138 HS LINKS 1074 VH AMSTERDAM	HANS 020/717293	1	02	C

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DATUM: 06-06-

numm.	n.a.w.	voorletters/telnr.	rayon	branche
1134	ALSEMA [redacted]	FRANK	1	02
1231	[redacted] AMSTERDAM	LOUS	10	02
1167	AMMELROOY [redacted]	WILLEKE VAN	1	02
1176	ANGREMOND POSTBUS 2013 1000 CA AMSTERDAM	TOM D'	1	02
1014	APON BINNENKANT 24 3H 1011 BH AMSTERDAM	ANNETTE	1	02
1098	ARONS OLYMPIAPLEIN 79 2H 1077 CR AMSTERDAM	FELIX (HFJM)	1	
1155	BAK POSTBUS 71204 1008 BE AMSTERDAM	FRANK N20/648257	1	02
1362	BARRAUD BLOEMGRACHT 77 1016 KG AMSTERDAM	SACHA	1	02
1130	BEEK DA COSTAPLEIN 20 1053 ZW AMSTERDAM	J.J.W. VAN	1	02
1283	[redacted] [redacted] HAARLEM	R	10	02
1182	BENDER LIJNMARKT 33 3511 KG UTRECHT	C.J.M. PER ADRES	1	02
1346	[redacted] AMSTERDAM	[redacted]	10	02
1501	[redacted] AMSTERDAM	J. DEN	12	02
1353	[redacted] [redacted] ASSELBURG	[redacted]	10	02

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DATUM: 06-06-87

numm.	n.a.w.	voorletters/telnr.	rayon	branche
1059	BRAAK WETERINGSCHANS 22 1017 SG AMSTERDAM	KRIJN TER	1	02 C
1052	BRAKEL BUIKSLOTERDIJK 402 1034 ZH AMSTERDAM	NOUCHKA VAN	1	02 C
1094	BREEBAART DE CLERCQSTRAAT 1 3H 1053 AA AMSTERDAM	WILLY	1	02 C
1038	BROMET MONNICKENDAMMERRIJWEG 47 1452 PM ILPENDAM	FRANS	1	02
1288	BR[illegible] S[illegible] 1011 JL AMSTERDAM	[illegible]	10	02
1390	BUETERS NASSAUKADE 20/4 1052 CH AMSTERDAM	G.	1	02 F
1462	BUETERS NASSAUKADE 20 4H 1052 CH AMSTERDAM	G.	12	02
1400	[illegible] [illegible] 2012 [illegible] HAARLEM	[illegible]	[illegible]	[illegible]
1213	CAMPING VAN BREESTRAAT 62 1071 ZR AMSTERDAM	R.H. N20/717273	10	02
1350	COHEN JAC V LENNEPKADE 109 2H 1054 ZJ AMSTERDAM	M.A.	1	02 C
1468	COHEN MAASSTRAAT 129 2H 1078 HH AMSTERDAM	PAUL	1	02 C
1325	CROISET A V VIANDENSTR 20 3633 CH VREELAND	HANS	10	02
1033	CURIEL LIJNBAANSTRAAT 7 1016 ST AMSTERDAM	H.H.A.	1	02 C
1085	DAMAVE MARNIXSTRAAT 354 1016 XV AMSTERDAM	DINI	1	02

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DATUM: 06-06-87 BL

numm.	n.a.w.	voorletters/telnr.	reason	branche	kode
1092	DAMEN IT WAR 5 8802 PH FRANEKER	ERNIE	1	02	C
1482	DAUDS BREDERODE 5 1275 DL HUIZEN	WILLEM	12	02	
1209	DEBATS LEIMUIDENSTR 27 2H 1059 EE AMSTERDAM	R	1	02	C
1504	DELPEUT MARATHONWEG 15 2H 1076 SX AMSTERDAM	PETER 020-625243	1	02	C
1146	DIAMAND COURBETSTRAAT 21 2H 1077 ZR AMSTERDAM	FRANK	1	02	B
1520	DIEM ROZENGRACHT 137 3H 1016 LV AMSTERDAM	MIKE VAN P/A NED FILM ACADEMIE 272810	11	02	
1103	DIJK GED VOLDERSGRACHT 20 2011 WD HAARLEM	GERRIT VAN	1	02	C
1338	DIJK BICKERSGRACHT 46A 1013 LG AMSTERDAM	PAUL A. VAN	10	02	
1518	DITSHUYZEN PLANTAGE KERKLAAN 27 1018 LV AMSTERDAM	DREEN VAN 254813	11	02	
1043	DITVOORST VOSSIUSSTRAAT 47 1071 AJ AMSTERDAM	ADRIAAN	1	02	B
1493	DRIESSEN 1E CONST HUYGENSSTR 102C 1054 BZ AMSTERDAM	J.M.	1	02	C
1513	DUINDAM HAARLEMMERDIJK 56 2H 1013 JE AMSTERDAM	JILLES P/A NED FILM ACADEMIE 244307	11	02	
1466	E[illegible] [illegible] 1000 BN AMSTERDAM	R[illegible]	12	02	
1104	ELST WILLEM DE ZWIJGERL 32 2H 1056 JS AMSTERDAM	G.P. VAN	1	02	C

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DATUM:06-06-07

num.	n.a.w.	voorletters/telnr.	rayon	branche	k
1079	HIELEMA MERNAWEG 11 [redacted] WEHE-DEN-HOORN	DIETSE	1	02	C
1507	HILBERDINK HOOFDWEG 19 1053 AN AMSTERDAM	FRED	1	02	H
1109	HIN V BAERLESTRAAT 134 1071 BD AMSTERDAM	KEES	1	02	C
1426	HOCK AMSTEL 342 3H 1017 AS AMSTERDAM	R.	12	02	
1234	HOCKX KRANENBURGWEG 61A 2581 XV DEN HAAG	NIEK	10	02	
062	HOLTHUIS TASMANSTRAAT 20 2518 VN DEN HAAG	GERARD	1	0.	
1081	HORST FAZANTENHOF 115 3755 EG EEMNES	HENK VAN DER	1	02	C
1172	HYLKEMA DAN. DE LANGESTR 14 HS 1071 WB AMSTERDAM	HANS N20/736223	1	02	C
1508	J[redacted] [redacted] 1270 AG HUIZEN	AB	12	02	
1075	JESUS WOLVENSTRAAT 23 3512 CG UTRECHT	SHERMAN R DE	1	02	C
1003	JONG KEIZERSGRACHT 649 1017 DT AMSTERDAM	ATE DE	1	02	C
1160	JONGERIUS MRG HORDIJKWEG 1 6573 DK BEEK	OTTO N3895/2763	1	02	F
1236	KELLER MR JC BUHRMANNLAAN 54 1244 PH ANKEVEEN	HANS	1	02	C
1163	KEUKEN PRINSENEILAND 91 1013 LM AMSTERDAM	JOHAN VANDER	1	02	E

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DATUM: 06-06-87 Bl

numm.	n.a.w.	voorletters/telnr.	rayon	branche	ko
1539	BIRKENFELD HERENGRACHT 20 R 1015 BL AMSTERDAM	ROBERT JAN 275330	1	02	A
1225	BL[redacted] [redacted] AMSTERDAM	[redacted]	10	02	
1342	BLOEM MIDDELLAAN 11 3721 PG BILTHOVEN	MARION	10	02	
1214	BLOKLAND RECHT BOOMSSLOOT 78 2H 1011 EC AMSTERDAM	GEERT VAN	10	02	
1519	BLOM BAARJESWEG 161 1H 1057 HN AMSTERDAM	ERIC P/A NED FILM ACADEMIE 853984	11	02	
1370	BOEKELMAN POSTBUS 11630 1001 GP AMSTERDAM	W.A.	1		
1268	BOELE JONKERSTRAAT 16 2953 XH ALBLASSERDAM	JAN	10	02	
1290	BOER POSTJESWEG 21 3H 1057 DT AMSTERDAM	LEO DE	1	02	C
1091	BOEZEM MGR C VEERMANLAAN 55 1131 KE VOLENDAM	NICK VAN DEN	1	02	B
1514	BOGAERDE REDHTBOOMSLOOT 33A 1011 CS AMSTERDAM	G.H.F. V.DEN	11	02	
1375	BOONSTRA DE GENESTETSTR 2 1H 1054 AX AMSTERDAM	MAYOLEINE	1	02	C
1220	BOS KRAMMERSTRAAT 9 2H 1078 KE AMSTERDAM	PAUL VAN DEN	1	02	C
1327	BOS HERENGRACHT 109 1015 BE AMSTERDAM	FROUKJE	1	02	A
1210	BOSDRIESZ BREDERODESTR 43 1054 MR AMSTERDAM	JAN	1	02	C

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DATUM: 06-06-87 BL

numm.	n.a.w.	voorletters/telnr.	rayon	branche	kac
1328	KIEL POSTBUS 37 1970 AA IJMUIDEN	JOHAN M (P/A KFP AV-TECHNIEK)	1	02	C
1241	KLEIJN OOSTERHOUTLAAN 6 2012 RB HAARLEM	JAN-HENK	10	02	
1088	KLEIN LIENDENHOF 61 1108 HB AMSTERDAM ZO	MARCEL	1	02	C
1244	KLINKERT POSTBUS 135 1270 AC HUIZEN NH	R	10	02	
1291	KOERT BROUWERSGRACHT 191 1015-GJ AMSTERDAM	DEA	10	02	
1237	KOK TREKVOGELWEG 156 3815 LT AMERSFOORT	THEO	10	02	
1153	KONING KLOVENIERSBURGWAL 94 HS 1012 CZ AMSTERDAM	JACQUES A DE	1	02	B
1523	KONING 2DE WETERINGDWARSST 40/3 1017 SX AMSTERDAM	JESSICA DE P/A NED FILM ACADEMIE 278642	11	02	
1178	KOPPEN CORN. ANTHONISST 55 1H 1071 VR AMSTERDAM	N.A. N20/791073	1	02	C
1202	KOS NOBELWEG 17 HS 1097 AR AMSTERDAM	H	1	02	A
1494	KRAMER F VAN MIERISSTR 47 2H 1071 RK AMSTERDAM	PAUL	11	02	
1039	KUMEL ST JOZEFSTRAAT 46 B 2018 ANTWERPEN BELGIE	HARRY	2	02	B
1448	LACHMAN H COCHERETHOF 18 3031 ND ROTTERDAM	D.	12	02	
1524	LAMMERS MARNIXSTRAAT 381 1016 XR AMSTERDAM	ESMEE P/A NED FILM ACADEMIE 249947	11	02	

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DATUM:06-06-87 BLZ

numm.	n.a.w.	voorletters/telnr.	rayon	branche	kode
1216	LANGENBERG TOGTENBURGSTRAAT 32 1107 PT AMSTERDAM ZO	CHRISTIAAN	10	02	
1173	LAOUT KAREL DE GROOTELAAN 70 S 1861 KK BERGEN NH	P.H.S.	1	02	C
1013	LECQ REMMERDEN PLEIN 36 1106 AE AMSTERDAM ZO	BAS VAN DER N20/969215	1	02	C
1317	LEEUW JAC VAN LENNEPKD 374 1H 1053 NL AMSTERDAM	PUCK DE	10	02	
1534	LIESHOUT IJSSELSTRAAT 5 3522 JW UTRECHT	BEN VAN 030/893133	11	02	
1477	L[illegible] [illegible] 3828 [illegible]	[illegible]ER	12	02	
1358	LITH WILGENLAAN 14 3831 XV LEUSDEN	TON	10	02	
1162	LOGGER ROEMER VISSCHERSTR 38 1054 EZ AMSTERDAM	ROY	1	02	C
1072	LOHMAN STAALSTRAAT 6 1H 1011 JL AMSTERDAM	JHFIN	1	02	C
1069	LOS 1E HELMERSTRAAT 106 1054 EG AMSTERDAM	H.L.M. *VERHUISD**	1	02	C
1221	LOUISSON-BARRIER WATERLOOPLEIN 303 1011 PG AMSTERDAM	AUGUST	10	02	
[illegible]	LUITING J.H. MEIJERSTR 23 1214 NG HILVERSUM	TON	10	02	
1525	LYKLES ZONSTRAAT 21-C 3581 MP UTRECHT	ELISABETH P/A NED FILM ACADEMIE 030/514819	11	02	
1529	LURSEN P LANGEDIJKSTR 45 3H 1054 XZ AMSTERDAM	JORAM P/A NED FILM ACADEMIE 239287	11	02	

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DATUM: 06-06-87

numm.	n.a.w.	voorletters/telnr.	rayon	branche
1078	MAAREL D V POLDERSVELDTWEG 349 6523 CZ NIJMEGEN	J.J. VAN DER	1	02
1122	MAAS BROUWERSGRACHT 212A 1013 HD AMSTERDAM	DICK	1	02
1032	MADSEN MARNIXSTRAAT 356 1016 XV AMSTERDAM	OLGA	1	02
1256	MARIS NIJENRODE 83 3813 NV AMERSFOORT	MARIJN	10	02
1540	MESKE RECHTBOOMSLOT 40G 1011 EC AMSTERDAM	ELLEN 244092	11	02
1485	MEULENDIJKS WETERINGSCHANS 47 1017 RW AMSTERDAM	J.L.M N20/263335	1	02
1066	MOERKERKEN SCHELDESTRAAT 96 4h 1078 GP AMSTERDAM	E. VAN	1	02
1054	MOLENAAR TUINSTRAAT 62-66 1015 PG AMSTERDAM	HILLIE	1	02
1212	MOMSHOUWER HOOGTE KADIJK 161 1H 1018 BJ AMSTERDAM	A	10	02
1074	MONNIKENDAM MULTATULILAAN 3 1215 BG HILVERSUM	VINCENT	1	02
1340	MONSTER 1E HELMERSTR 107 1054 DM AMSTERDAM	RUUD	10	02
1232	MUFTY SLEEWIJKSTR 26 1107 TV AMSTERDAM ZO	ASAD	10	02
1484	NABER NASSAULAAN 27 1213 BA HILVERSUM	MIKE 035/288969	1	02
1541	NASSENSTEIN VELDLAAN 51 2111 VM AERDENHOUT	HANS 023/242253	11	02

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DATUM: 06-06-87 B

numm.	n.a.w.	voorletters/telnr.	rayon	branche	ko
1526	NEVEJAN ABC-STRAAT 20 3512 PX UTRECHT	CHRISTINE P/A NED FILM ACADEMIE 030/322356	11	02	
1027	NIE OZ VOORBURGWAL 219 1012 EX AMSTERDAM	RENE VAN	1	02	C
1262	NIEUWENHOF GAREWEI 2 9134 NR LIOESSENS	DRS. F. Ph.	10	02	
1270	NO[illegible] [illegible] 1052 JL AMSTERDAM	CISKA JA	10	02	
1077	OCKERSEN WILHELMINAWEG 54 2042 NR ZANDVOORT	M.C.	1	02	C
1026	OOSTHOEK P DE HOOCHSTRAAT 32 1071 EG AMSTERDAM	PETER	1	02	C
1247	OOSTHOEK HOGE NAARDERWEG 85 1217 AD HILVERSUM	ERIC	10	02	
1219	OOSTRUM 1E HELMERSSTRAAT 189 HS 1054 DT AMSTERDAM	H.J.M. VAN	10	02	
1137	ORTHEL LAURIERGRACHT 123 2H 1016 RK AMSTERDAM	ROLF	1	02	C
1246	PAASHUIS BAGIJNHOF 28-30 2611 AP DELFT	EUGENE	1	02	C
1140	PETERS SINGEL 395 1H 1012 WN AMSTERDAM	MARIA	1	02	C
1090	PIETERS WETHOUDER FRANKEWEG 24/3 1098 LA AMSTERDAM	GUIDO	1	02	C
1229	PIETERS MOLENWEG 80 1608 EG WIJDENES	VIVIAN 02293/1477	1	02	C
1282	PIMENTEL J.M. KEMPENSTR 94 HS 1051 TV AMSTERDAM	POLLO DE	1	02	A

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DATUM: 06-06-87 BLA

numm.	n.a.w.	voorletters/telnr.	rayon	branche	kode
1527	PLUG ALBERT CAMULAAN 96 1102 WJ AMSTERDAM Z.O.	DIRKJAN P/A NED FILM ACADEMIE 906731	11	02	
1058	POPPELAARS LIJNBAANSGRACHT 91 3H 1015 GZ AMSTERDAM	GER	1	02	C
1143	POS WETERINGSCHANS 126 1017 XV AMSTERDAM	HANS J.	1	02	C
1331	POS CZAAR PETERSTR 65 1018 PB AMSTERDAM	DIEGO	1	02	C
1528	PRINS G FLINCKSTR 343 1074 CC AMSTERDAM	MARCEL P/A NED FILM ACADEMIE 736609	11	02	
1383	PUNT TOLSTRAAT 72 1H 1073 SE AMSTERDAM	KARIN	11	02	
1097	PURY LIJNBAANSGRACHT 391 1017 XC AMSTERDAM	DELPHINE DE	1	02	C
1355	RAAFF HUGO DE GROOTKADE 15 HS 1052 LN AMSTERDAM	HENK	1	02	C
1000	RADEMAKERS PRINSENGRACHT 685 1017 JT AMSTERDAM	FONS	1	02	CB
1047	RADEMAKERS PRINSENGRACHT 685 1017 JT AMSTERDAM	LILI	1	02	C
1530	RAEDECKER LINDENSTRAAT 26 1015 KX AMSTERDAM	ERNST P/A NED FILM ACADEMIE 252412	11	02	
1276	REBEL VAN BEUNINGENSTR 137 2H 1051 XL AMSTERDAM	HELEEN	1	02	C
1322	REIJNDERS RIETGRACHTSTR 30 6828 KD ARNHEM	MARK	10	02	
1273	RENOU NEUWEG 68 1214 GW HILVERSUM	HENK	10	02	

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DATUM: 06-06-87 BL

numm.	n.a.w.	voorletters/telnr.	rayon	branche kod
1339	RETEL HELMRICH WARMONDSTR 61 1H 1058 KR AMSTERDAM	LEONARD	10	02
1115	RICHTERS OKEGHEMSTRAAT 31 1075 PL AMSTERDAM	A.W.	1	02 B
1245	RIVERA WOLVENSTR 23 3512 CG UTRECHT	HOMERO	1	02 C
1444	ROLLINSON JANTERGOUWWEG 46 1412 MC NAARDEN	KEITH T.	12	02
1133	ROOD J V LENNEPSTRAAT 250/3 1053 KB AMSTERDAM	JURRIEN	1	02 C
1281	ROOSMALEN VAN DER WAALSTR 13 2313 VB LEIDEN	MARIKE VAN	10	02
1126	ROUVEROY VAN NIEUWAAL ELANDSGRACHT 114 2H 1016 VB AMSTERDAM	D.X. VAN	1	02 C
1531	RöDER DR JJ VD HORSTSTR 26 1544 XE ZAANDIJK	JOHN P/A NED FILM ACADEMIE 075/210633	11	02
1028	SAKS PRINSENGRACHT 827 1017 KB AMSTERDAM	MADY	1	02 C
1021	SCHEEPMAKER VIJZELSTRAAT 15 2584 GH DEN HAAG	HANS	1	02 C
1487	SCHEFFER ZOUTKEETSGR 116 3H 1013 LC AMSTERDAM	FRANK	1	02 C
1207	SCHELTEMA V WOUSTRAAT 106 1H 1073 LS AMSTERDAM	R	10	02
1025	SCHENKKAN AMSTERDAMSESTRAAT 18 1398 BL MUIDEN	INE	1	02 C
1419	SCHLEBAUM DE KEMPENAERSTR 2 1081 CN AMSTERDAM	W.	1	02 C

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DATUM:06-06-07 D

numm.	n.a.w.	voorletters/telnr.	ra.on	branche	kc
1274	SCHOPPENS VROLIKSTRAAT 290 2H 1092 VA AMSTERDAM	KOOS	10	02	
1306	SCHOTS ZUIDERHOOFDSTR 52 1501 AW KROMMENIE	F	10	02	
1532	SCHOTS ZUIDERHOFSTRAAT 52 1561 AN KROMMENIE	FRANK P/A NED FILM ACADEMIE 075/281953	11	02	
1031	SCHOUTEN BROUWERSGRACHT 705 1015 GJ AMSTERDAM	GEORGE	1	02	C
1278	SCHOUTENS PRINSENGRACHT 493 1016 HR AMSTERDAM	FRANK	10	02	
1096	SCHRAM SINGEL 395 1012 WN AMSTERDAM	D.P	1	02	C
1200	SCHUITEMAKER WEESPERZIJDE 121 1H 1091 EP AMSTERDAM	RUUD	1	02	C
1049	SEEGERS SAXEN WEIMARLAAN 44 1075 CD AMSTERDAM	RENE	1	02	C
1538	SEUNKE LELIEGRACHT 30 1015 DG AMSTERDAM	ORLOW 239457	11	02	
1008	SEVERIJN RATELLAAN 7 8394 VM DE HOEVE	JONNE	1	02	C
1271	SEYFERTH VONDELKERKSTR 28 HS 1054 KZ AMSTERDAM	MAARTJE	1	02	I
1458	SIJBESMA OUD LOOSDRECHSEDIJK 131 1231 LT OUD LOOSDRECHT	FLORIS	1	02	
1086	SINKE REYER ANSLOSTRAAT 10 1054 KV AMSTERDAM	DIGNA	1	02	
1119	SLUIZER STADIONWEG 212 1077 TE AMSTERDAM	GEORGE	1	02	

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DATUM:06-06-87

numm.	n.a.w.	voorletters/telnr.	rayon	branche	k
1205	SLUIZER 4E NASSAUSTR 17 2H 1052 BE AMSTERDAM	JORIS	1	02	C
1211	SMALING FOKKELAAN 25 1185 JA AMSTELVEEN	H PETER	10	02	
1063	SMIT LINGEDIJK 3 4151 ED ACQUOY	BOUD	1	02	C
1177	SMIT 2DE SCHINKELSTRAAT 172 1075 TT AMSTERDAM	WILBERT N20/623796	1	02	C
1223	SOMBOGAART HEMONYLAAN 6 1074 BE AMSTERDAM	BEN	1	02	C
1535	STAAK JACOB OLIEPAD 2 1013 DP AMSTERDAM	FRANS VAN DE 260634	11	02	
1102	STEENBERGEN OZ VOORBURGWAL 19 EH 1012 EH AMSTERDAM	LOET	1	02	C
1376	[redacted]	[redacted]	[redacted]	02	
1024	STELLING SPRINGWEG 50-52 3511 VS UTRECHT	JOS	1	02	C
1267	STUUR FAZANTENKAMP 937 3607 EH MAARSSEN	CHRIST	1	02	C
1537	TERMAAT QUELLIJNSTR 105 3H 1071 XH AMSTERDAM	RON 797389	11	02	
1150	TUYLL V SEROOSKERKEN DORPSWEG 4 9922 PH WESTEREMDEN	CHARLOTTE V	1	02	
1312	UITDEHAAG WATERTORENWEG 296 3063 HA ROTTERDAM	ANTOINE P/A RO THEATER	10	02	
1439	UMFAHRER IDS WIERSMASTRAAT 25 9153 BS BRANTGUM	K.J.	1	02	

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DATUM: 06-06-07 BLF

numm.	n.a.w.	voorletters/telnr.	rayon	branche	kode
1277	USLU LAURIERSGRACHT 77 1016 RH AMSTERDAM	MERAL	10	02	
	[illegible] GOUERT FLINCKSTR 334 1H 1074 CE AMSTERDAM	LEONIE	1	02	C
1011	VELDE H SAFTLEVENSTR 1 BIS B 3583 BH UTRECHT	J.G.G.VAN DE	1	02	C
1044	VERBONG AMSTEL 155 1H 1018 ER AMSTERDAM	BEN	1	02	C
1181	VERBRUGGE PIETER JACOSZSTR 24 1012 HL AMSTERDAM	C.J.A.	1	02	C
1252	VERBUNT R HALSSTRAAT 102 5102 DH DONGEN	J	10	02	
1041	VERHOEFF BLASIUSSTRAAT 6 HS 1091 CR AMSTERDAM	PIETER	1	02	C
1042	VERHOEVEN 1271 GRANVILLE AVE 304 LOS ANGELES CA 90025	PAUL 213/4784644	1	02	S
1260	VERSCHOOR [illegible] 2585 BA DEN HAAG	[illegible]	10	02	
1001	VERSTAPPEN POSTBUS 245 1000 AE AMSTERDAM	WIM	1	02	CB
1015	VISSER ARIES VD VLERKSTR 143 3063 RC ROTTERDAM	B	1	02	B
1218	VISSER DA COSTAKADE 23 2H 1052 SE AMSTERDAM	JEROEN	1	02	C
1064	VODEGEL UBBERGENSDIJK 16 6574 AL UBBERGEN	J.W.	1	02	C
1204	VONK JAVASTRAAT 63 2H 1094 HA AMSTERDAM	JOSE	1	02	A

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DATUM:06-06-87 BL

numm.	n.a.w.	voorletters/telnr.	rayon	branche kode
1240	ELTENA ACHTERSTRAAT 10 4182 CD NEERIJNEN	E.J.	10	02
1521	EPSKAMP GIETERSTRAAT 1 1H 1015 HB AMSTERDAM	JACQUELINE P/A NED FILM ACADEME 223393	11	02
1136	FELS LISSERWEG 491 2165 AS LISSERBROEK	HANS DE OLMENHORST	1	02 C
1068	FRANCKEN POBOX 17174 1001 JD AMSTERDAM	SANDER	1	02 C
1352	FRANSMAN TRANSVAALKADE 25 1092 JL AMSTERDAM	ERIK	1	02 C
1056	FRENKEL KOESTRAAT 34 1012 BX AMSTERDAM	MICHA	1	02 C
1046	FRENKEL FRANK KONINGINNEGRACHT 82 2514 AJ DEN HAAG	DIMITRI	1	02 C
1009	GASTEREN KLOVENIERSBURGWAL 49 1011 JX AMSTERDAM	LOUIS VAN	1	02 C
1185	GEST QUELLIJSTRAAT 48 1072 XT AMSTERDAM	PETER	99	02 C
1379	GIELING GOUDSBLOEMSTR 124 1015 JT AMSTERDAM	RAMON	1	02 C
1315	GI[redacted]EL [redacted]50 1016 [redacted] AMSTERDAM		10	02
1071	GISOLF ZANDPAD 7 1054 GA AMSTERDAM	AART C.	1	02 C
1159	GOGH PRINSENGRACHT 546 1017 KK AMSTERDAM	THEO VAN	1	02 C
1016	GORRIS JACOB V LENNEPKADE 44 3H 1053 ML AMSTERDAM	MARLEEN	1	02 C

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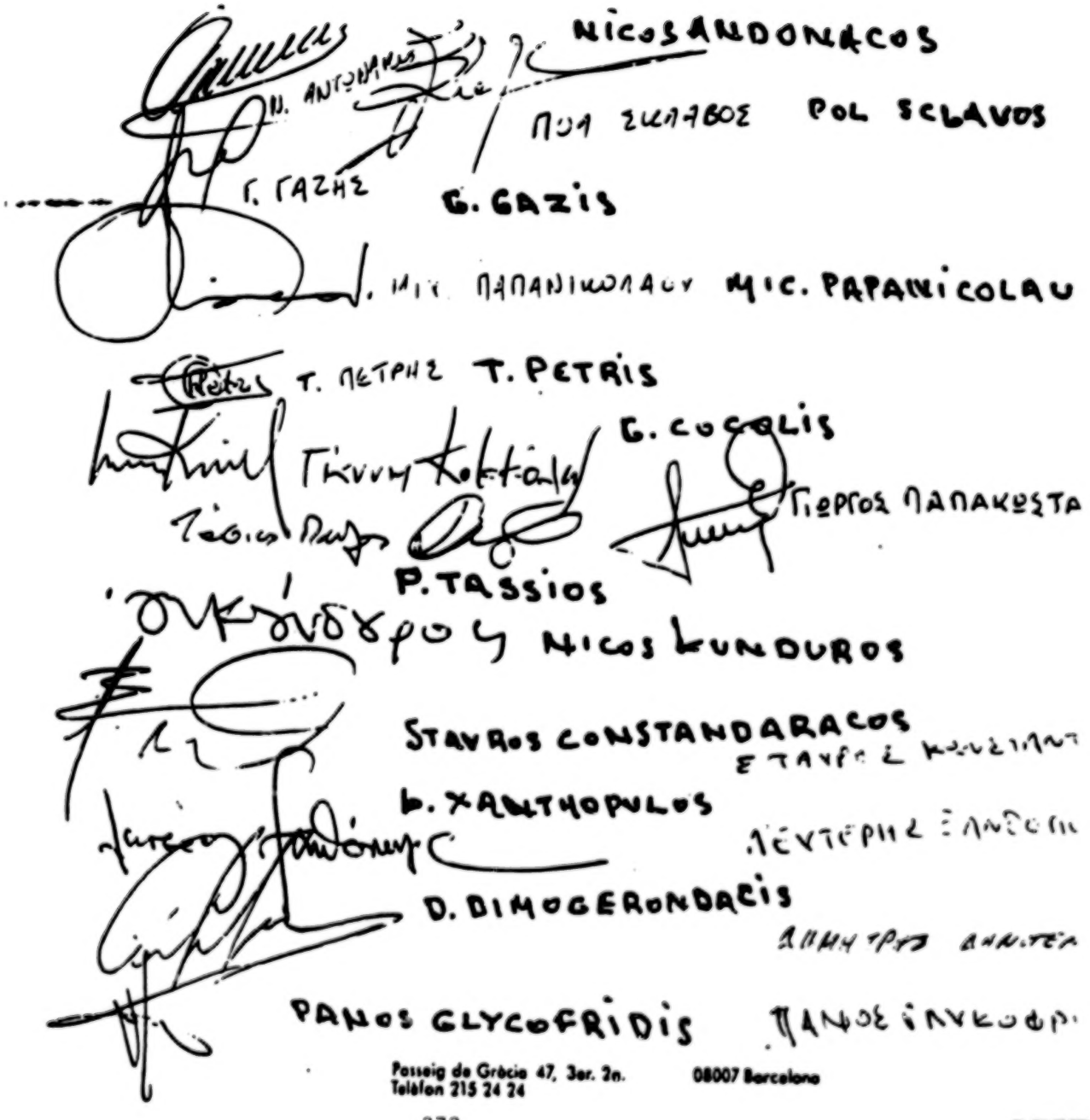
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PANGOPULOS O.

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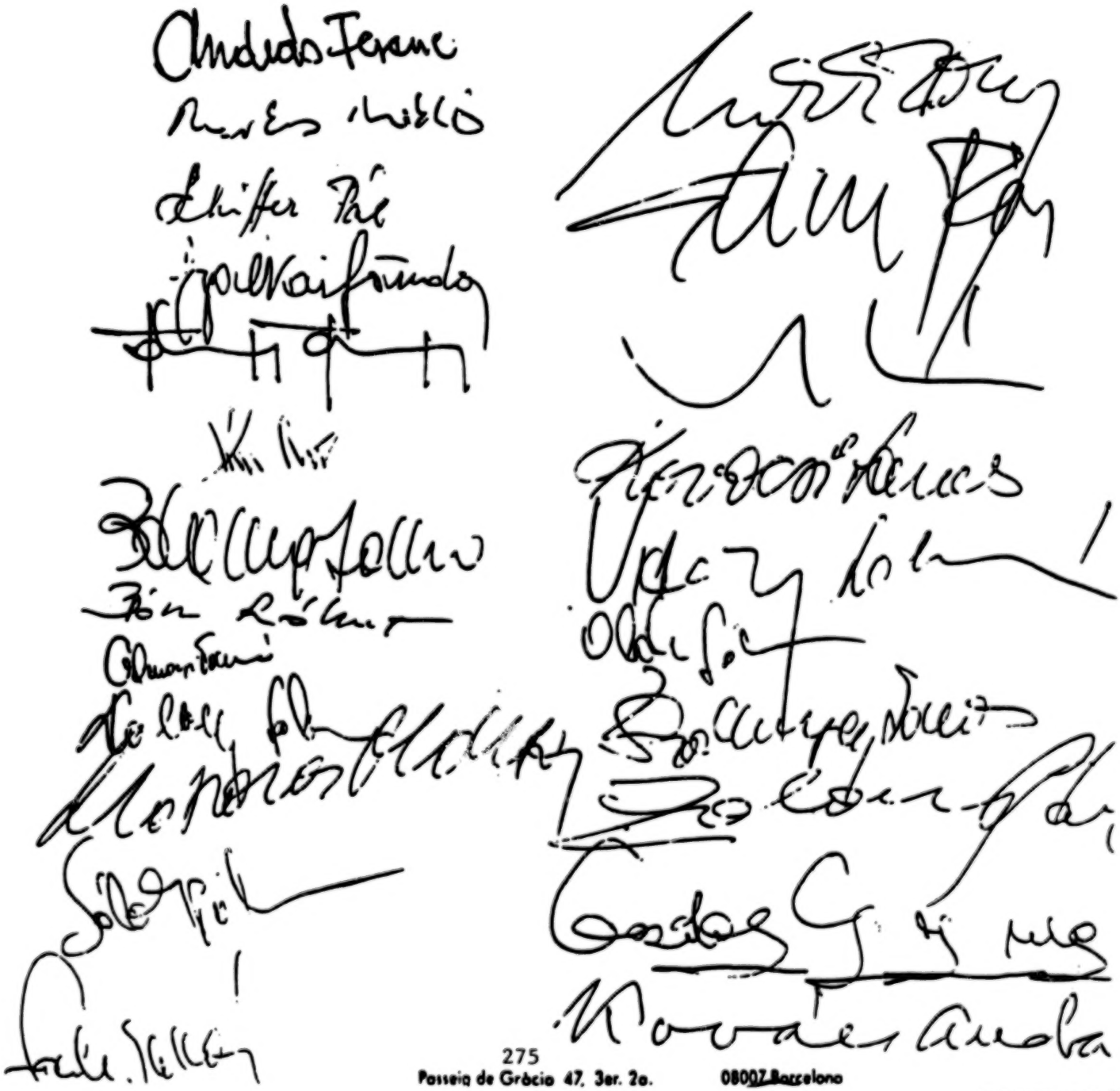
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ROMA, 15 LUGLIO 1987

TLX NR 67

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Bogdanovich Peter
Brooks Mel
Brooks Richard
Brown Barry
Burns Allan
Camp Joe
Campanella Roy
Carpenter John
Carter Thomas
Carver Steven
Cates Gilbert
Chaffey Don
Chapman Matthew
Chudnow Byron
Claxton William
Clifford Graeme
Cohn Eugene
Conner Kevin
Collier James
Cook Alan
Cook Fielder
Coulter Jack
Culp Robert
Damski Melvin
De Luise Dom
De Palma Brian
Doran Stanley
Donner Richard
Downer Robert
Dugan Michel
Edwards Vince
Eastman Charles
Ferrara Abel
Fleischer Richard
Frank Melvin
Fraker William A.
Frankenheimer John
Freedman Jerrold
Friedkin William
Poyser John
Pierson Frank
Pintoff Ernest
Polonsky Abraham
Pollack Sidney
Peter Bluthy William
Post Ted
Quine Richard
Rafelson Bob
Reynolds Gene
Robbins Jerome
Rydell Mark
Rosenberg Stuart
Raisy Sutton
Rosenblum Ralph
Saperstein David
Schaefer George
Schaffner Franklin
Sacks William
Sanders Dennis
Scorsese Martin
Seidelman Susan
Sidney George
Siegel Donald

Angeli Alfredo
Angelo Poulos Theo
Annaud Jean Jacques
Antoine Raymond
Antonelli Massimo
Antonioni Michelangelo
Arando Vicente
Arlorio Giorgio
Artero Antonio
Astruc Alexandre
Badalucco Nicola
Baroduc Philippe
Bardem Juan Antonio
Bertolini Elio
Bertolomé Cecilio
Bayona Jordi
Becker Jean
Beckwort Paul
Beek Hans van
Bellmont Francesc
Bellocchio Marco
Bellon Yannick
Berger Carlos
Beraud Luc

Condroyer Philippe
Conrad Patrick
Corbucci Sergio
Correa João
Costa Gorras Constantin
Crescmone Francesco
Damiani Damiano
Davy Jean François
Deconinck Jean Marie
De Kermadec Liliane
Delannoy Jean
Delvaux André
Dembo Richard
Del Fra Lino
Demy Jacques
Deville Michel
Dilmon Stephane
Daniel Velcroze Jacques
Doussaint Domenique
Drach Michel
Dreville Jean
Dubreuil Charlotte
Effentorre Bertrand
Enrico Roberto

Haynsmann Laurent
Hondo Med
Hudson Hugh
Ips Multi
Incrocci Age
Ivens Joris
Jansen Ives
Jessua Alain
Kane Pascal
Kanrismaki Aniko
Klimov Elen
Koech Paul
Kovacs Andras
Kratz Kathe
Kümel Harry
Lambo Ronald
Lamberto Richard
Lattuada Alberto
Lavachet Ernest Josef
Lehman Boris
Lelouch Claude
Leone Sergio
Leroy Serge
Leto Marco

Masalli Francesco
Medioli Enrico
Méndez Leite Fernando
Marcaro Antonio
Milakovski David
Miró Pilar
Moretti Nanni
Mitsengere Chantal
Monicelli Mario
Montaldo Giuliano
Mingozzi Franco
Mitrani Michel
Miller Claude
Moullet Luc
Nelli Piero
Nolin Jean Marie
Nordon Vincent
Novotny Franz
Ola Salum Jorge
Opluls Marcel
Orsini Valentino
Palmieri Gabriele
Parker Alan
Patino Basilio M.

Rais
Rappeneau Jean
Ribas Antoni
Rohmer Eric
Roland Raul
Rosi Francesco
Rouve John
Rosaberg Susan
Rouch Jean
Rovira Beleta Francesc
Rydings Mello
Sämann Peter
Salgot J. A.
Santiago Hugo
Sautet Claude
Scarpelli Furio
Schmidt Jean
Scola Ettore
Sengers Fons
Seroni Vicenzo
Serreu Colina
Servais Raoul
Solanas Fernando
Sonego Rodolfo
Soupart Andre
Steno
Stercky Jean Luc
Storck Henry
Szabo Laslo
Szuczinger Boris
Tachella Jean Charles
Tanner Alain
Tasso Ronald
Tavernier Bertrand
Taviani Paolo y Vittorio
Thomas Pascal
Toint Hubert
Tärhonen Lauri
Trueba Fernando
Turino Juan Marc
Valeri Tonino
Vancini Florestano
Vanneteun der Hugo
Verhevert Roland
Vermerchen Chris
Vernuti di Piero
Vial Guy
Vicenti Edgerando
Wajda Andrew
Weinberg Marc Hari
Wenders Wim
Weastappen Wim
Wertmüller Lina
Zaccai Claude
Zavattini Cesare
Zeno Thierry

Japó
Japan

Chino Koji
Ichikawa Ken
Imamura Shohei
Inagaki Iroshi
Kinoshita Keisuke
Kobayashi Masaki
Kurosawa Akira
Nakamura Genp

Nosaltres, directors de cinema *exigim:*

Com a dret moral que les nostres obres arribin a l'espectador tal i com foren concebudes originàriament.

Directors and writers as the artistic authors of films *demand:*

The moral right to have their work exhibited throughout the world in the form in which it was originally released.

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Friedlin William
Fuller Samuel
Franklin Richard
Goldstone James
Gordon Michael
Gottlieb M.
Greene David
Grest Martin
Grillo Michael
Grosbard Ulu
Haines Randa
Harrington Curtis
Hayers Sidney
Hellman Monte
Henry Buck
Higgins Colin
Hively Jack
Holzman Allan
Holland Tom
Hooper Jerry
Hooper Tobe
Jaffe Stanley
Jewison Norman
Kagan Jeremy
Kasdan Lawrence
Kaufman Philip
Kaylor Robert
Kennedy Burt
Kershner Irvin
Kopple Barbara
Kulik Buzz
Landis John
Lang Walter Sr.
Lee Malcolm
Lester Mark
Levin Peter
Lewis Bob
Littman Lyn
Lowell Rich David
Lumet Sidney
Lynch David
Markiewicz Tom
Martinson Leslie H.
Marquis Warren Charles
Mann Daniel
Mcveety Vincent
Morton Andrew
Mazursky Paul
McBride Jim
Meyer Russ
Michaels Richard
Mickin Silver Joan
Miller Michael
Mora Philippe
Morris Howard
Moses Gilbert
Mulligan Robert
Moore Richard
Neame Ronald
Nelson Gene
Nadel Arthur
Newman Paul
Odonohue Michel
Oswald Gert
Panamá Norman
Pollrow Bruce W.
Parrish Robert
Penn Arthur
Perry Frank



Nimura Yoshitaro
Oshima Nagisa
Yoshida Yasughiro

Association of Danish Film Director
Association Suisse des Realisateurs de Films
Associação Portuguesa de Realizadores de Film
Arbeits Gemeinschaft Neuer Deutscher Spielfilmproduzenten
Genootschap van dor Nederlandse Speelfilmakers
Association Irish Independent Filmmaker
Association Polish Filmmaker
Association Magyar Film
Directors Guild of Japan

Silverstein Elliot
Silton Gilbert
Shea Jack
Sherman Vincent
Scott Tony
Smight Jack
Springsteen R.
Sgarro Nicholas
Stein Lane
Stone Oliver
Stevens George Jr.
Stanley Paul
Stein Leonard
Struck Joseph
Severc Jaromet
Tannen William
Taylor Don
Toth Andre de
Vincent O'Neil Robert
Wallen Fran
Warner Peter
Weiler Haskell
Wilder Gene
Williams Paul
Wise Robert
Workman Chuck
Yost Larry
Zimmerman Fred
Swarin Charlotte
Zsitiga Frank

Europa
Europe

Ackerman Chantal
Agata Giuseppe
Aguirre Javier
Akika Ali
Albicocco Jean Gabriel
Almoida Sebastian
Almendros Nestor
Almodovar Pedro
Amar Dennis

Berger Christian
Bernardi Piero
Bertolucci Bernardo
Bertucelli Jean-Louis
Bigas Luna
Blain Gerard
Blier Bertrand
Blumal Marcel
Bodegas Roberto
Boigelot Jacques
Boisset Yves
Bolognini Mauro
Borau José Luis
Bozzetti Marcel
Branco Antonello
Brandauer Karin
Bresson Robert
Bragi Taviani Franco
Bruck Edith
Brusati Franco
Buñuel Juan Luis
Cabanat Patrick
Cadena Jordi
Calenchi Stefano
Camino Jaime
Capresse Edmond
Carbonaux Norbert
Carlo Carlo di
Carlsen Henning
Carpi Fabio
Carre Jean Michael
Cassenti Frank
Cavani Liliana
Cecchi d'Amico Suso
Chardonne Francois
Cingolani Paolo
Clair Philippe
Clavaut Claire
Cohen Martin
Cohen Paul
Colette Jean
Comencini Luigi
Comeron, Luis José

Erice Victor
Eyll van Rob
Faccini Luigi
Fellini Federico
Ferrara Giuseppe
Ferreri Marco
Fleischman Peter
Fondato Marcello
Font Domènec
Forbes Brian
Forst René
Forn Josep M.
Forqué José Maria
Francois Claude
Freudlon Peter
Lapeira Santiago
Gandi Michele
Geerts Ronald
Geronimo Bruno di
Gianni Luigi
Gilson René
Giménez Rico Antonio
Giraldi Franco
Glück Wolfgang
Goretta Claude
Granier Defere Pierre
Grau Jordi
Greco Emilio
Gregoretti Ugo
Gregorio Toni di
Guerin Agnes
Guerin J. L.
Guerra Tonino
Guglielmi Massimo
Guilmain Claudine
Gutiérrez Aragón Manuel
Gyory Mrtal
Hajek Peter
Hallini Andre
Hänsel Marian
Handerichy Guido
Harraldo Gonzalo
Heusch Luc de

Lavia Marc
Lindblom Gunnel
List Niki
Lizzani Carlo
Loridan Marcelino
Loy Nanni
Maggi Luigi
Manilla Rafaella
Majewski Janusz
Malerba Luigi
Malle Louis
Mangani Cecilia
Masó Pedro

Petzet Peter
Pauli Rudolph
Pecha Juan Jacques
Petrovitch Alexandre
Pinateau Claude
Polanski Roman
Pons Ventura
Pontecorvo Gillo
Ponzi Maurizio
Pousseur Henri
Pozzo di Borgo Catherine
Rabinowicz Maurice
Rabier Jacques

Amb la collaboració de la F.E.R.A. i la «Directors Guild of America»
With the F.E.R.A. and the «Directors Guild of America» collaboration

Festival de Cinema de Barcelona
Barcelona Film Festival

Films i Directors
Films & Directors



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LUCASFILM Ltd

George Lucas Statement

Senate Hearing On Berne Treaty

My name is George Lucas. I am a writer, director, and producer of motion pictures and Chairman of the Board of Lucasfilm Ltd., a multi-faceted entertainment corporation.

I am not here today as a writer-director, or as a producer, or as the chairman of a corporation. I've come as a citizen of what I believe to be a great society that is in need of a moral anchor to help define and protect its intellectual and cultural heritage. It is not being protected.

The destruction of our film heritage, which is the focus of concern today, is only the tip of the iceberg. American law does not protect our painters, sculptors, recording artists, authors, or filmmakers from having their lifework distorted, and their reputation ruined. If something is not done now to clearly state the moral rights of artists, current and future technologies will alter, mutilate, and destroy for future generations the subtle human truths and highest human feeling that talented individuals within our society have created.

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A copyright is held in trust by its owner until it ultimately reverts to the public domain. American works of art belong to the American public; they are part of our cultural history. For over fifty years in seventy-six nations, with the notable exception of the United States and Russia, the arbitrator of the artistic disposition of a work of art has been the creator or creators of that work. Who better, than the person whose hard labor and unique talent created the art, to determine what is an appropriate alteration.

Buying a copyright does not make one an artist. The copyright owner does not suddenly become talented and creative, does not suddenly have the ability to write a novel, play music, paint pictures or make films. An artist's creative talent is not something that can be transferred. And it is the artist's unique vision that must be respected, that must be protected.

This nation needs a simple moral anchor regarding art and artists. That anchor has been provided for in Article 6 bis, the moral rights clause of the Berne Treaty. It has worked for many years in many different countries. It is simple: Under 6 bis, an artist would have the right to object to the defacement of his work. Any legislation short

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of this is a patchwork which will confuse, and continue to need re-patching.

Creative expression and imagination are human qualities, they are part of the very essence of what it is to be human.

People who alter or destroy works of art and our cultural heritage for profit or as an exercise of power are barbarians, and if the laws of the United States continue to condone this behavior, history will surely classify us as a barbaric society. The preservation of our cultural heritage may not seem to be as politically sensitive an issue as "when life begins" or "when it should be appropriately terminated," but it is as important because it goes to the heart of what sets mankind apart. Creative expression is at the core of our humanness. Art is a distinctly human endeavor. We must have respect for it if we are to have any respect for the human race.

These current defacements are just the beginning. Today, engineers with their computers can add color to black-and-white movies, change the soundtrack, speed up the pace, and add or subtract material to the philosophical taste of the copyright holder. Tomorrow, more advanced technology

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will be able to replace actors with "fresher faces," or alter dialogue and change the movement of the actor's lips to match. It will soon be possible to create a new "original" negative with whatever changes or alterations the copyright holder of the moment desires. The copyright holders, so far, have not been completely diligent in preserving the original negatives of films they control. In order to reconstruct old negatives, many archivists have had to go to Eastern bloc countries where American films have been better preserved.

In the future it will become even easier for old negatives to become lost and be "replaced" by new altered negatives. This would be a great loss to our society. Our cultural history must not be allowed to be rewritten.

Bertrand Tavernier, President of the French Society of Film Directors, has said that his first introduction to the United States was through American films of the 30's and 40's. He saw "Mr. Smith Goes to Washington" and applauded the reply to a cynical senator, who thought Mr. Smith's idealistic venture would fail, that it was a "lost cause." "Lost causes," replied James Stewart as Mr. Smith, "are the only kind worth fighting for." Tavernier saw and understood that perseverance and morality could persuade the Senate. American films encouraged Tavernier to become a filmmaker.

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Now, "Much to your shame," he says, "America has become a garbage dump for films." What law will stop this? There is none.

I am the chairman of a corporation that produces motion pictures. The Berne Treaty is necessary to protect the motion picture industry and the recording industry from international piracy. This is just good business. Why do I advocate moral rights for artists when others claim it will destroy the industry? Supporting the moral rights clause is good business. The creators of an artistic work that will eventually be exploited are the core of the motion picture industry. Creative talent is a precious resource. It is limited, it needs to be nourished, and it needs to be replenished. Artists need a sense that the work they are doing is meaningful and that what they are doing will last, complete with all the subtle nuances they have struggled so hard to achieve.

The money spent to alter established works could be better spent to support and develop new talent. American artists are a national treasure similar to our forests, our wildlife, and other natural resources. It is good business to exploit these resources wisely. If one doesn't, one will eventually be out of business, with our resources squandered

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for quarterly profits and lost for future generations. Providing the best possible product is good business.

My company is extremely successful because I believe in creating quality entertainment. The marketplace responds to quality and I have built my company on this idea. Flooding the marketplace with shoddy inferior products ultimately hurts business. Filmmakers have continued to work for me over the years at lower rates than they could get working for the larger corporations because I respect their talent and have an understanding of the creative process.

The corporations, who hold many of the copyrights, are unstable entities. They are bought and sold, and corporate officers change on a regular basis. There is nothing to stop American films, records, books, and paintings from being sold to a foreign entity or egotistical gangsters and having them change our cultural heritage to suit their personal taste.

I accuse the companies and groups, who say that American law is sufficient, of misleading the Congress and the People for their own economic self-interest. The law is not sufficient.

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I accuse the Motion Picture Association of seeking to save one billion dollars in film piracy, without acknowledging the moral rights of the artists who created these films as required by the Berne Treaty.

I accuse the corporations, who oppose the moral rights of the artist, of being dishonest and insensitive to American cultural heritage and of being interested only in their quarterly bottom line, and not in the long-term interest of the Nation.

The public's interest is ultimately dominant over all other interests. And the proof of that is that even a copyright law only permits the creators and their estate a limited amount of time to enjoy the economic fruits of that work.

There are those who say American law is sufficient. That's an outrage! It's not sufficient! If it were sufficient, why would I be here? Why would John Houston have been so studiously ignored when he protested the colorization of "The Maltese Falcon?" Why are films cut up and butchered? Where can an artist go to protest?

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Vandalizing a work of art and then putting a disclaimer on it saying this was not what the artist originally intended is not sufficient. Excluding some artists from moral rights protection because they were commissioned to create a work is not sufficient.

Is an artist who works for hire any less of an artist? Is the Sistine Chapel ceiling any less a work of art, and unworthy of protection, because Michelangelo worked for hire?

It has been suggested that the problem of the defacement of our films could be solved legally by removing the credit of the director and the writer. I ask, "What about the production designer, the cinematographer, the editor and the others who contributed to that central artistic vision?" And the answer comes back, "Well, we will remove their credits too; that way no one gets hurt." No one, that is, except the poor actors who are left on the screen, pinned like helpless butterflies as their faces are recolored, their wardrobe redesigned, their timing thrown off, their entrances and exits truncated and their characterizations shorn of critical dialogue.

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Attention should be paid to this question of our soul, and not simply to accounting procedures. Attention should be paid to the interest of those who are yet unborn, who should be able to see this generation as it saw itself, and the past generation as it saw <u>itself</u>.

The other arts have not been hit quite as hard as film. But who is to say that, one day, it may also be profitable to alter paintings, literature, or a recording artist's performance. A clear statement of our national values must be made now. Are we going to be a society totally controlled by greed and profit? You make the laws, and the laws represent an awareness of a higher moral order. Law by greed denies our humanness.

I hope you have the courage to lead America in acknowledging the importance of American art to the human race, and accord the proper protection for the creators of that art -- as it is accorded them in much of the rest of the world communities.

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LUCASFILM Ltd

GEORGE LUCAS BIOGRAPHY

George Lucas is the creator of the phenomenally successful "Star Wars" saga. The epic film adventures--"Star Wars," "The Empire Strikes Back" and "Return Of The Jedi."

Lucas was born in Modesto, California, where he attended Modesto Junior College before enrolling in the University of Southern California (USC) film school. As a student at USC, Lucas made several short films including "THX-1138" which took first prize at the 1967-68 National Student Film Festival. In 1967, Warner Bros. awarded him a scholarship to observe the filming of "Finian's Rainbow," directed by Francis Coppola. The following year, Lucas worked as Coppola's assistant on "The Rain People" and made a short film entitled "Filmmaker" about the directing of the movie.

Lucas and Coppola shared a common vision. They dreamed of starting an independent film production company where a community of writers, producers, and directors could share ideas. In 1969, the two filmmakers moved to Northern California where Coppola founded American Zoetrope. The company's first project was Lucas' full-length version of "THX-1138."

In 1973, Lucas co-wrote and directed "American Graffiti." The film was extremely successful and won the

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Golden Globe, the New York Film Critics and National Society of Film Critics awards, and received five Academy Award nominations.

Four years later, Lucas wrote and directed "Star Wars"--a film which broke all box office records and won seven Academy Awards. The film not only brought audiences back to the theater but also opened new frontiers for technicians. Lucas established Industrial Light and Magic (ILM) and Sprocket Systems to create the special effects and sound design for "Star Wars." The ILM team introduced computer technology to the film industry and revolutionized special effects. Ben Burtt of Sprocket Systems brought new dimensions to sound design as he created voices for aliens, creatures, and droids.

Lucas went on to write the stories for "The Empire Strikes Back" and "Return Of The Jedi" which he also executive produced. In 1980, he was the executive producer and co-writer of "Raiders Of The Lost Ark," directed by Steven Spielberg, which won five Academy Awards. He was also the co-executive producer and creator of the story, "Indiana Jones And The Temple Of Doom," released in 1984.

For the next few years, Lucas concentrated on completing the building of Skywalker Ranch and developing individual divisions within Lucasfilm Ltd. The Ranch houses Lucasfilm's pre- and post-production facilities. The company

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includes film production, animation, computer games, licensing, THX and TAP, special effects, and post-production divisions.

Within the past year, Lucas served as executive producer for Disneyland's 3-D musical space adventure, "Captain EO," and creator of Disneyland's most popular attraction, STAR TOURS. "Captain EO," directed by Francis Coppola and starring Michael Jackson, is shown in a theater uniquely designed for the 17-minute spectacular. Lucas, Industrial Light and Magic, and Disney designed the theater as part of the show and produced a visual, aural, and environmental experience unique in the 3-D medium.

Lucas, Industrial Light and Magic and Sprockets also collaborated with the Disney Imagineers to create Disneyland's newest attraction, STAR TOURS. Lucas combined technology with creativity to produce a new realm of entertainment.

George Lucas is currently the executive producer for two Lucasfilm productions. "Willow," based on a story by George Lucas and directed by Ron Howard, is an adventure-fantasy that takes place a long time ago in a mythical land. "Tucker: A Man And His Dream," directed by Francis Coppola and starring Jeff Bridges, is the story of Preston Tucker--an innovative car designer who dreamed of creating the car of the future.

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- Statement of Steven Spielberg

My name is Steven Spielberg, and I am a director and producer of motion pictures. I am here today on my own behalf and on behalf of my 8,500 fellow members of the Directors Guild of America. I have submitted a written statement on behalf of the Directors Guild of America. Sitting with me is Elliot Silverstein, also a director, and Chairman of the Committee at the Directors Guild, charged with the pursuit of our moral rights goals. He will also be available for any questions you may have.

And now, if I may, I would like to make a brief oral statement.

It is 1812 and British soldiers have captured some American paintings and prints and taken them to Halifax, Nova Scotia. A suit has been brought over this action and filed with the British authorities. A British Admiralty Justice has heard the case and as part of his judgment has given the following warning:

> The same law of nations, which prescribes that all property belonging to the enemy shall be liable to confiscation, has likewise its modifications and

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> relaxations of that rule. The arts and sciences are admitted amongst all civilized nations, as forming an exception to the severe rights of warfare, and as entitled to favour and protection. They are considered not as the peculium of this or that nation, but as the property of mankind at large, and as belonging to the common interests of the whole species.

The paintings and prints were ordered released to the Pennsylvania Academy of Fine Arts. That justice understood what so many of our adversaries in this hearing and in the Congressional hearings which preceded it, do not understand; that art claims a special status among civilized nations. Artistic endeavor is, in fact, the expression of the soul of the human species and we are here today to discuss the disposition of a small but important piece of the soul of America - its art; specifically, its motion pictures.

The Congress levies taxes on the citizens of our country in order to nourish and define our way of life. The President and the Congress require military service in times of emergency to protect it. Surely it is not simply our

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political system that we seek to protect and nurture, but the way of life - the special culture that the American political system permits and encourages. Certainly one component of our national culture is its art which provides so many ornaments and insights to our daily lives. And one of the arts is certainly our motion pictures - perhaps our nation's foremost ambassadors to the world. So, in a very real sense the nation, which has paid the price for its culture, has an investment in the preservation of what it has paid for and what it has been called upon to occasionally protect in war - that way of life, its benefits and products which we leave to our children.

The Berne Treaty, Mr. Chairman, gives voice to this idea that art and the artist are not commodities to be treated like sausage. The Berne Treaty gives to the artist a specific standing to object to a defacement of his/her work and it recognizes moral rights as distinct from economic rights. That distinction is at the heart of the debate surrounding the Berne Treaty issue.

As you know, in order to sign the treaty, a country must have a moral rights concept in its domestic law, <u>sufficiently clear</u> to comply with the requirements of the treaty. Our adversaries maintain that United States law <u>is</u>

sufficient to qualify for Berne membership and no further recognition need be given to the moral rights of its artists. No film fantasy is as outlandish or as blatant as that claim. Under what law is the work of fil. artists, for instance, protected? Where is the law that defines their moral rights? What law gave Frank Capra moral rights to object to the colorization of "Its A Wonderful Life"? What law gave John Huston legal support to seek redress for his disgust at a similar act of defacement performed on "The Maltese Falcon"? What law will protect our dead colleagues from eternal embarrassment at the hands of corporate defacers? What law protects those of our colleagues, living and dead, whose honor and reputation are offended by the electronic speeding up or slowing down of their films or the capricious editing of scenes, done in order to fit the films into arbitrary time slots (a curse not visited on sports events - which proves that the networks can be flexible with their time slots if they want to be)? What law protects against the offense to honor and reputation of our <u>foreign</u> colleagues whose films undergo similar humiliations when they are exhibited in the United States? What law will stop this? There is none.

If our adversaries think the Lanham Act protects us, they are wrong. In order to comply with its warnings about misrepresentations, a film defaced would merely have to

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put up a disclaimer before the film is projected, stating that it has been colorized, that it has been electronically shortened, that scenes have been edited out for time, that the composition has been changed, etc. The Lanham Act does not protect the film, it does not protect the artists. It protects the consumer and does not in any way bestow the credentials on the United States which are clearly required by the Berne Treaty.

How did this magical notion arrive that something is there that isn't there? The business community has gathered together and in a massive and cynical act of self service, they have invented it - without any basis in fact. They have performed this reverse intellectual somersault in order to rationalize their insensitive and untenable position; namely, that what is good for the business community is good for the U.S.A. Of course, they are partially right but not wholly right. A community of artists also lives, has a voice and also contributes to the national health and welfare. We request that you rebalance the competing interests of "show" and "business" after the employer/employee period is over and deadlines have been met. We urge that Berne implementing legislation contain our proposal that, without the agreement and permission of the two artistic authors (the principal director and principal

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screenwriter), no material alterations may be made in a film following its first, paid, public, exhibition after previews, trial runs and festivals.

We further propose that the Congress limit the reward for the agreement between artistic authors to $1.00. We also propose that no requirement to grant permission be included in an employment contract. As you know, the motion picture companies stand the original copyright thesis on its head by requiring that the artistic authors give up any moral rights or copyrights to the financing corporation. If they refuse, they don't work; it is all neat and simple. So far, Goliath has had all the chances of battle. Article 6 bis of the Berne Treaty is the stone for David and David will not give it up lest the future look back and find its own cultural history in disarray.

There are those that say "the market place enjoys this defacement, they want to see black and white films in pastel colors, they want to see it faster or slower, they will tolerate any disfigurement, etc." Mr. Chairman, this is one of the most ticklish answers I have to offer in this chamber this morning, but it must be said: The creation of art is not a democratic process and in the very tyranny of its defined vision lies its value to the nation. The public

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has no right to vote on whether a black and white film is to be colored anymore than it has the right to vote on how the scenes should be written, whether the camera should favor the actor or actress, whether it should move or remain fixed, whether the next angle should be a close up or a wide shot, or on any of the thousands of other artistic choices made by the artist in the turbulent process of creation. The public does have a right to accept or reject the result, but not to participate in its creation.

My good friend, Mr. Jack Valenti, who represents the Motion Picture Association of America, has said that the motion picture companies lose 1 billion dollars a year to film pirates. He seeks the Berne Treaty protection and in that we wish him well. However, it is ironic Mr. Chairman, that he proposes that the United States use the same tactics as the pirates who refuse to pay the price for what they are using. He proposes that the United States sneak by the box office without paying for the ticket. He proposes that the MPAA get all the economic protection of Berne <u>without paying the price it requires</u> - <u>moral rights</u>! Mr. Chairman, let not the United States attempt to gain something for nothing. Let us not stand accused by the other Berne nations of sleazy behavior. Let us not attempt to "sneak past the box office." Let us <u>honorably</u> pay the price of Berne and serve the future.

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Let generations yet unborn see the films produced by our film artists as they were released, not in some distorted form designed by an engineer, a master of business administration, a lawyer, an agent, an accountant, a marketeer, an executive, or some other non-artist who, not claiming an individual right of paternity, does not step into the light and take the discredit for what has been done to our film, but rather hides safely, in the dark - invisible, behind the corporate shield.

In the interest of fair play and honor among the civilized nations of the world, we ask the senate to stand up and perform an act of political courage; to resist the economic powers which insist that you serve them only and not us; to recognize the moral principle involved here as of greater importance to our national self-esteem than another buck on the bottomline; to grant that Berne requires moral rights in American law that do not now exist.

The Senate must serve future generations which it represents here today and not merely the present, limited, economic interests of corporations which have sufficient power already.

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Finally, Mr. Chairman, the business community makes a bizarre claim that the grant of moral rights will result in lawsuits and the clogging of the court system. First, let me say that there is a strong self policing component in our proposal. If a director or writer do not agree to an alteration of a finished film which is desired by the financier, it is highly likely he/she will not be employed by that financier again. But he/she will have a choice! And there will be a balancing of interests. Secondly, if our courts are clogged at present in this country, it is because the citizens demand rights given to them by the Constitution and the law. That is a healthy thing, critical to the functioning of a democracy. Would the corporations demand a removal of the First Amendment from the Constitution in order to clear court dockets of First Amendment problems? You should be aware that in France, at least, we have been told that there has only been one moral rights case brought to court in fifty years. Thirdly, since in order to object, the artist would have to go to court, he/she would have to spend a lot of money (and who would have the deeper pockets, the individual or the corporation?). The artist would have to care very much about the disposition of the work. But the artist would have a choice! And there would be a balancing of interests.

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We ask nothing for ourselves, we ask everything for the future. Surely, Mr. Chairman, there must be some part of the great tapestry of American political, economic and cultural life, so influenced by the Congress of the United States, <u>where value shall survive price</u>!

Thank you, Mr. Chairman.

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DIRECTORS GUILD OF AMERICA

STEVEN SPIELBERG

Biography

After more than a decade of moviemaking, Steven Spielberg has emerged as one of the film world's most respected and successful talents. He has directed and/or produced seven of the top 20 grossing films of all time.

In recognition of his consistent exellence in filmmaking, he received the prestigious Irving G. Thalberg Award at the 1987 Academy Award ceremonies.

"Empire of the Sun" is the first film he has directed since "The Color Purple" which received eleven Academy Award nominations and earned him the coveted Directors Guild of America Award. "The Color Purple" was produced by Spielberg, Kathleen Kennedy, Frank Marshall, and Quincy Jones. For "Empire of the Sun" he has again been nominated by the Directors Guild of America.

Born in Cincinnati and raised in Phoenix, Spielberg made his first film at the age of 13. While a student at California State Long Beach, he made his first 35mm short film, "Amblin," which so impressed Universal Studios they put the young filmmaker under contract.

Following his award-winning television movie, "Duel" (which later found great success in European theatrical release). Spielberg directed his first feature film, "The Sugarland Express."
His next two films, "Jaws" and "Close Encounters of the Third Kind" were phenomenally successful and were nominated for multiple Academy Awards.

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Following his big-scale comedy "1941," he teamed with long-time friend George Lucas to make "Raiders of the Lost Ark" which he directed and Lucas produced. It was that year's top grossing film and recipient of five Academy Awards.

In 1982, the filmmaker co-wrote and co-produced the thriller "Poltergeist" while concurrently directing "E.T. The Extra-Terrestrial," the number one box office success of all time.

After directing one segment of "Twilight Zone - The Movie" which he co-produced, Spielberg once again teamed up with George Lucas on "Indiana Jones and the Temple of Doom."

Spielberg formed his production company, Amblin Entertainment, in 1984 and has since gone on to executive produce, with Kathleen Kennedy and Frank Marshall, "Gremlins," "The Goonies," "Back To The Future," "Young Sherlock Holmes," "The Money Pit," "An American Tail," "Innerspace" and "Batteries Not Included."

Currently in post-production is "Who Framed Roger Rabbit?," directed by Robert Zemeckis scheduled for a summer 1988 release by Disney. He is currently in pre-production on the third "Indiana Jones" film for a start this spring. Also in production for Universal is "Land Before Time" which is being presented by George Lucas and Steven Spielberg.

In addition to developing a number of varied projects for future production, Spielberg was executive producer of the network anthology series "Amazing Stories," for which he directed two episodes.

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Statement of Bo Goldman

on behalf of the Writers Guild of America

before the

Subcommittee on Patents, Copyrights & Trademarks

Committee on the Judiciary

U.S. Senate

March 3, 1988

Affiliated with the Writers
Guild of America, East, Inc.

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Respected Members of the Subcommittee on Patents, Copyrights and Trademarks.

Mr. Chairman, copyright is the life's blood of an artist. You will hear from magazines and publishers, studios and producers, software owners and pharmaceutical proprietors, but how ironic you will hear from so few of us you wish to protect.

Art is neither a patent, a copyright or a trademark. Art is the soul of a nation. Art is the substance without which, other than bread, man cannot live. Art is a Grandma Moses or a Jackson Pollack, a Bob Dylan song or a Jerome Robbins ballet, a Tennessee Williams play or a movie by Francis Coppola. Art is that which we cannot eat or drink but which can, like our faith, sustain us in our darkest moments, enhance our daily lives, celebrate our tiny, but intense victories.

How can you legislate art? It is like quicksilver, it can't be shaped or hammered into some form to serve one generation, and then dismembered to serve another. It is like taking a baby and saying this arm's no longer any good, it's not the kind of arm that's in fashion now, let's take an arm from that baby over there, and how about that leg, is the head right? Bob the nose, implant the breasts, take a tuck

here and a nip there, now we have a saleable baby. But it bears no resemblance to the baby that was born. So what? We can sell more of them.

Respected members of the subcommittee, I do not envy you your job. The hours of droning testimony, the tedium of marking-up a bill and then marking it up all over again, the lobbyists, the press, the enemies, and God knows, the friends, the compromise of family life, the long flights back to the constituency on the weekend and then the long flight back after to make sure you are here to cast your vote on some issue on which your convictions are not clear, but your intuition and your heart fairly shouts at you what to do. Why do you do it? The New York Times may love you and the big newspaper back home may hate you, Dan Rather may snarl at you, but then again he may smile on you and do you, like me, ever look in the mirror in the morning and say "What in the hell am I doing this for?" Politics, like art, is not an easy dollar. And I may be on dangerous ground if I offer, you do this, just as I do what I do, because you cannot do anything else as well. It is a calling, a sometimes distant and distorted one to be sure, but nonetheless it speaks to you.

How would you like your words changed? How would you like your face tinted? How would you like the substance of what you say altered or compressed, truncated or bowdlerized, to suit what a publisher may deem the fashion of a later generation? Why should it be "four score and twenty years ago," why not just a hundred years ago, it's much easier to remember, simpler to digest and besides, the man who wrote the phrase isn't around to complain about it?

Our movies belong to us. Like our house and our land. They are dear and indefinable like our wives and our children. They are as unique as a fingerprint and sometimes as dangerous and stunning as an earthquake. John Ford's "The Grapes of Wrath" tells us more about the depression than a college of economics, and Coppola's "The Godfather" provides more insight into the criminal mind than all the files of the FBI.

Phrases like "cultural heritage" confound me. I feel as if I were studying for a high school exam. I do know this - I want my children and their children to see my movies the way they were written. When the Indian finally speaks in "One Flew Over The Cuckoo's Nest" I want him to say "Juicy Fruit" and not Diet Bubble Gum. On the long shot of the ward, I want to see the old hallucinator dancing in the back,

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and on the pan, I don't want it to stop before it reaches the poor lobotomized soul behind the cage. In "Melvin and Howard," you could take out the first and last reels of the movies, excise Jason Robards completely, forget about Howard Hughes, call the movie "Melvin" and it will play fairly well as a country western. I want my children to see it the way it was written, I want their children to do the same, I want their friends and their parents, their communities and their cities, I want the world to see the movie in the color, in the shape, with the words and the texture it was conceived because simply enough, that is the best way.

Democracy is the last and best hope of mankind. It's great for mankind but terrible for art. A movie is not written by committee, is not shot by consensus, it starts with one man or woman along in a room, and then the director, despite the hordes around him, is alone on the stage, there is collaboration at every step but the decision a costumer makes to sew a sequin here or a bow there, a cameraman to jell this window or not, an editor to go to the long shot from the closeup or the closeup from the long shot, every artist ultimately makes the decision and it is a lonely one - forged by years of experience, the pain of trial and error, and made with the deepest of emotions. These movies are who we are. Who we have been. Who we will be. These movies are

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the litany of our existence, and the food of our souls. They are absent-minded laughter, and they are unconscious tears. You can't change them any more than you change the wart on Lincoln's face. They are sometimes not pretty, they are sometimes dispensable, but a thousand years from now, they will still be us.

"What are the mechanics for this?" you might ask. Forty-five years ago, my father sat before a senate sub-committee with a plan to fight inflation. Compulsory savings it was called, and my father took the long trainride home, clutching the hot acetate of his appearance, we gathered around to listen and heard Senator Taft or was it Vandenberg say "What are the mechanics for his, Mr. Goldman?" and I thought, all ten years of me, they've got him, what's he going to say, and I promptly fell asleep as he intoned his reply. My answer to him to do this is simply: "If you want to do it, you'll do it." If politics is the art of the possible, then art is the science of the impossible. You'll find a way, implement the dry, dusty phrases of the Berne Convention, not a very sexy issue as the newsmagazines would say, but crucial to how this country is perceived.

Movies are who we are. Don't fool with us. Not in the name of money or progress or arrogance. Remember the

first time you went with your parents to "Snow White." With your girl to "Singin' In The Rain." With your children to "E.T." You have the right to see it that way and only that way forever. And that's the way it was made.

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Cheryl D. Rhoden
Director of Public Relations

BO GOLDMAN is a native of New York City. He attended Princeton University and, at 24, had his first play produced on Broadway. Titled "First Impressions," it was a musical version of "Pride and Prejudice," with words by Bo Goldman, book by Abe Burrows and music by Glenn Paxton.

During the early 60s, Goldman worked in television, writing and producing teleplays for CBS' "Seven Lively Arts"--on which he collaborated with such emerging directors as George Roy Hill and Sidney Lumet. He also associate produced and wrote a number of programs for "Playhouse 90," all the while struggling to get a second play mounted on Broadway.

Goldman's first screenwriting effort, "Shoot the Moon," took ten years to make it into theaters. One of the many people to read the script during that time was director Milos Forman, who didn't want to make the film but instead asked Goldman to do a re-write of a project that Forman was about to direct. The resulting effort, "One Flew Over the Cuckoo's Nest," was a tremendous success and remains to this day only the second film in Academy history to win Best Picture, Direction, Actor, Actress and Screenplay.

Since that time, Goldman has had several original scripts produced: "Melvin and Howard," which won him a second writing Oscar, and the much-traveled "Shoot the Moon," which was directed by Alan Parker and starred Diane Keaton and Albert Finney. Goldman's other screen credit is "The Rose."

Journalist David Chute once wrote: "Goldman's flair for lifelike dialogue and behavioral details--an organic impression of ongoing life--has won him an enviable reputation and a solid sideline as a 'fixer' of troubled films."

Goldman lives in Northern California with his wife of 34 years, Mab, and is the father of six children.

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FILMOGRAPHY

One Flew Over the Cuckoo's Nest (1975).....Screenplay by Laurence Hauben and Bo Goldman, from the novel by Ken Kesey

The Rose (1979).....Screenplay by Bo Goldman and Bill Kerby, story by Bill Kerby

Melvin and Howard (1980).....Screenplay by Bo Goldman

Shoot the Moon (1982).....Screenplay by Bo Goldman

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DIRECTORS GUILD OF AMERICA

Statement of the

Directors Guild of America

Before the

Subcommittee on Patents, Copyrights & Trademarks

Committee on the Judiciary

U.S. Senate

March 3, 1988

DIRECTORS GUILD OF AMERICA, 7950 SUNSET BLVD., LOS ANGELES, CA 90046

NATIONAL OFFICE TELEX NUMBER 181498

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Mr. Chairman, we are very pleased to have the opportunity to appear before the subcommittee today as it reviews Berne implementing legislation.

The Directors Guild of America is a labor organization representing America's working film directors. Throughout its history, the Guild has fought not only for economic rights but also for protection of the artistic integrity of the work of film directors. Similarly, the Berne Treaty advancement is the economic and artistic rights of copyright leaders and artists. Or so we understand the words of the Treaty. But judging from the tone of the hearings, from the preponderance of testimony from proprietors, from the backhanded treatment given moral rights and artists, it is clear concern is centered totally on advancing the economic interests of intellectual property industries. Artists are the orphans in the storm.

Today's hearing illustrates the point. One panelist after another represents either an industry or a proprietary point of view. One panel, our panel, has moral rights as its cause. If we include the Mathias hearings, there have been 10 days of testimony on Berne legislation featuring a parade of witnesses from business or government agencies whose responsibilities are to advance business interests. Seven artists will have testified; were it not for the Directors Guild of America and our companions at the

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Writers Guild, only two artists would have appeared, Garson Kanin and William Smith. This is a sad fact, leading to unwarranted implications. It is outrageous in its unfairness.

But such is the arithmetic in testimony concerning the Berne Convention for the Protection of Literary and Artistic Works. We ought to change the title, since it appears we have a case of misrepresentation, to the Berne Convention for the Advancement of Proprietary Interests. Reviewing the hearing record, one might conclude that corporations are creators and artists. Ridiculous! People create!

In April of 1986, Sen. Mathias completed his second day of hearings on the Berne Treaty. He had this exchange with Tad Crawford of the Graphic Artists Guild.

Sen. Mathias. But Berne itself has been the subject of discussion among graphic artists?

Mr. Crawford. Mainly the issue of the moral rights provision of Berne, and also the general enhancement that would flow from that kind of international protection.

Sen. Mathias. The reason I press you on this a little bit is because we ought to hear more from creators of copyrighted works. Creators of copyrighted works are very often individualists. Being creative individuals, they do not always tend to be organized.

Sen. Mathias' wish should have been prophetic; more artists ought to have been heard from in the course of this debate precisely because Berne was not mislabelled, and because Berne is rich with other standards and concerns besides those relating to economic interest. Surely the lineage of the literary conferences of the 1860's, 70's and 80's, which gave rise to Berne, is not the profit sheet of proprietors. If that were the case, there would be no point to a number of revisions throughout the course of the convention adopted specifically in recognition of the impact of technology on art forms and authors. How would one account, then, for the 1908 rewrite Berlin that addresses the need to protect authors rights vis-a-vis photography and the emerging art of cinema? How would one account for the provisions relating to "moral rights," arguably the last great conceptual addition to the Treaty?

Article 6bis enshrines in dignity the labor of artists. And it does so at a point in time, 1928, in which it is clear that technology is contributing to the birth of new art forms and new methods of distribution. Sixty years ago in that new fangled world of technology-based art forms, it was the creative person that the Berne nations went out of their way to recognize as remaining at the center of creative endeavor.

We are at another time when technology is advancing so rapidly that accepted concepts of authorship, ownership, infringement, distribution, etc. may require radical rethinking in our copyright laws. Every advance of technology is a double-edged sword; there is the promise of new and startling fresh artistic visions; there is the possibility that old or new artistic products will be altered or mutilated or stolen by punching a keyboard. What is constant is the contribution of the artist.

Copyright laws, our own and those of other countries, are designed to nurture creative effort, and our Constitution provides for an economic incentive to encourage the advance of the arts and sciences. But as Frank Pierson noted in his testimony in September "for the serious artist and author economic incentive is not the issue. ... These

people of genius create out of an inner drive beyond the reach of economic incentive; the economic benefit of copyright merely frees them to do what the Constitution says it wants them to do."

Berne does not merely present an opportunity to recognize through moral rights the intrinsic value of artists and their works, it imposes an obligation to do so. Berne compliance without moral rights is not merely an empty gesture, it is insufficient.

This may well be the final hearing on what is widely regarded as the most important piece of copyright legislation analyzed by Congress since the 1976 rewrite. Clearly, becoming a part of Berne has its rewards. The U.S. would assume its rightful leadership role in international copyright counsels. The nagging and proper charge that the U.S. seeks higher standards of protection for its own copyrighted works but not for those of other countries would be put to rest. At a stroke, the ratification of Berne would eliminate the need, and the time and money involved, in securing backdoor protection. Enormous progress can be made in curtailing the piracy of American intellectual property, with all of its implications for fairer trade and trade imbalances.

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Great accomplishments, to be sure. But what is historic about Berne is what we regard as the heart of the treaty, its moral rights. For the first time ever in the deliberations of Congress, it is possible for the United States to recognize in an unambiguous way the rights of artists. More than that, the adoption of moral rights as a part of the Berne Treaty would add to the Constitutional element of economic incentive a clear message that the work of artists is intrinsically valuable. Individual artists and their work would be given, as Berne says they deserve, a decent measure of respect and protection.

The problem in this sophisticated, technological century, Mr. Chairman, is that artistic creations and endeavors are frequently not those of single authors. Motion pictures and publishing, for instance, are enormous industries that have grown up in order to develop and deliver the products of creative endeavor to the marketplace. But who is the creator in such a case?

American copyright law has viewed the world through the lens of property rights, economic incentive, risk capital. So in the case of motion pictures, copyright has been vested with the financier. In the case of publishing, copyright is most often vested in the book or magazine

company. But, of course, financiers don't write books or make motion pictures.

This debate over the Berne Treaty has been dominated and controlled by proprietary interests. The dangerous imbalance of power that permeates the relationship of creators with those who buy their talent and sell their work has permeated the debate in Congress. Very politely, with the full dimensions of legal sophistry, these interests are quite simply trying to retain in the Berne legislation the same kind of control over artists as they retain in the ordinary course of doing business.

We believe this debate was prejudiced from the point at which the self-appointed Ad Hoc Committee was convened. Here you have a group of twelve private interests, supposedly disinterested, merely analyzing the impediments in U.S. law that need correction for the U.S. to join the Berne Convention. But on this copyright jury, only two of its members could reasonably claim to represent only constituencies of artists. There were no artists. This was not a dispassionate copyright tribunal -- it was a cheering section for big business.

It wasn't any surprise that such a group should decide that the contentious point in the upcoming debate, moral rights, was, after all, "irrelevant" to passage. If there were moral rights, the floodgates of litigation would open, magazines would not be able to publish, the movie industry would collapse, and the world would stop turning on its axis. Moral rights had to be trivialized and disposed of, rationalized into irrelevance through the claim that U.S. law already provides for the moral rights of Berne. This cynical ploy grows out of the political calculus that the proprietors would not grant an inch more authority or respect to the artists they employ or the works they create. It's Berne or moral rights, but not both.

There are many important issues in the Berne Treaty, but surely the most challenging one is moral rights: that is, moral rights breaks new ground in U.S. copyright law by bringing a new conceptual framework of rights to bear on the side of authors. American law is organic and can absorb new concepts. American ideas of fair play can move beyond where they are now. And American ideas of what is in the public interest can be further articulated. But following the debate in Congress, one might guess that moral rights is either a minor matter in the text of the Treaty or merely an inconvenient impediment to U.S. adherence. It is neither.

Nor do moral rights signal, like a death-knell, the demise of America's copyright industries.

Virtually all previous witnesses arguing for U.S. entry into the Berne Convention have contended that present U.S. law meets the minimum standards of moral rights required by Berne. These witnesses say the Lanham Act is sufficient, or that U.S. case law points the way, or that state statutes will protect the author should he or she be aggrieved regarding the rights of paternity and integrity.

This is nonsense, and our opponents know it. The Lanham Act is insufficient to meet the goals of Berne, as are state statutes. And while case law might evolve toward greater protection for artists, that claim is largely speculative. In fact, the weight of cases runs in the opposite direction. Even the case most often mentioned, Gilliam v ABC, the Monty Python program, has not spawned case law progeny to protect against artistic mutilations.

Those who oppose moral rights -- but who nevertheless want to see the U.S. ratify the Berne Treaty -- have devised the "chicken little" theory. According to this theory, artists and creators, who have heretofore conducted amicable relations with buyers, syndicators, licensors and

publishers, will suddenly condemn in court every cropped photograph, every edited work. The system by which artistic products are marketed and sold will be thrown into chaos.

However, countries where national legislation provide for artists rights have not had their court dockets inundated with moral rights cases, or their intellectual property industries collapse, as our opponents contend would happen. France, a country known for the most developed national legislation regarding the protection of artists, has maintained high artistic quality without sacrifice of its business or judicial systems. Of course, experiences vary from country to country, and France or other countries in Europe cannot serve as perfect models for the litigious United States, but their experience under moral rights tends to refute the anxiety-ridden claims of our opponents. Moreover, it is not entrepreneurs alone that rely on the developed systems of publishing, marketing, licensing, reproducing, and syndicating artistic materials. Artists rely on these systems, too.

Film directors for whom I speak, like other artists, view this moral rights debate as a question of cultural honesty. We beseech the Congress to insure that the works we created, that have been published and that bear our

name, are maintained in that fashion - unless we agree to change them. This is at the heart of the rights of paternity and integrity, the moral rights explicitly set forth in the Berne Treaty. Our goal is made more urgent today because motion pictures are being offered to the public as the original version when, in fact, significant alterations have been made.

The most publicized of these changes is colorization of original black and white films, but it is not the only one. Movies can be electronically compressed in time by having their footage speeded up, and by this process, the director's choices about the pace and the visual rhythm of the film, an essential artistic element, are co-opted by technicians. Through panning-and-scanning, visual images are compressed from a wide screen to a much smaller television format, and in the process a technician must arbitrarily edit out visual materials he deems unimportant or irrelevant.

The computer coloring of black and white films, which has jeopardized America's film heritage, galvanized the Directors Guild to protest. American film masterpieces, that had been shown for years in their original black and white, are being altered and then exhibited or sold to mass markets. Fundamental, creative decisions designed to enhance the

dramatic effect of black and white movie making are being colored over. In Orwellian fashion, the machines revise film history, trampling upon the honor and reputation of the great directors who created those works. To us, this issue crystallizes the moral rights debate, and offers the specter of a director's reputation being damaged in the eyes of future generations.

Obviously, the director's grievance is not with technology - movies are an art form based in 20th century technology. Our grievance is with those who purposefully change motion pictures from what they were when they were released for exhibition without the consent of the primary artistic authors of the film. The technology available to these people is moving at such a pace that the entire archive of American film is under threat.

This is the point where our concerns merge with other creators, such as those in the fine arts, whose works may also be defaced. And this is the point where it becomes powerfully clear that explicit <u>legal</u> protection is required to insure that art works are not arbitrarily altered contrary to aesthetic intent.

We recognize, however, that moral rights raise concerns of the producing companies, and perhaps some of these fears can be put to rest. Our interest is seeing to it that the finished work, the released motion picture, is protected:

(1) "Moral rights" would entail no changes whatsoever in the production phase of movie-making. To insure this, we recommend that statutory language be crafted to clarify that moral rights would obtain only after theatrical release, the first paid, public exhibitions of a film following previews, trial runs, and festivals, all of which provide input leading to the final release version of the film.

(2) "Moral rights" would be alienable. This is in accord with traditional American contract law. Some of my colleagues, who have made film in black and white, have stated they would have no objection to their work being colored by a computer. Others would. The choice should rest with the film's creative authors - the principal director and screenwriter.

(3) The Guild seeks no alteration of the traditional employer/employee relationship that is

characteristic of relations between producers and directors. As far as copyright ownership, the work-for-hire doctrine should remain expressly in tact. Moral rights, not economic rights, would be provided the principal director and principal screenwriter.

(4) To emphasize that our concern is for the integrity of the artists work and not for any economic reward offered for granting permission to alter a film after release, we propose that the Congress limit any compensation for such permission to $1.

Mr. Chairman, we understand that explicit moral rights language may break some new legal ground based on legal theory more fully developed in Europe. But Berne presupposes that artists and creators are not ordinary entrepreneurs and that their contributions should not be regarded solely as a matter of commercial concern. This is precisely what is distinctive about Berne and its moral rights provisions.

Those contending U.S. law is currently sufficient in providing artists with protection are really saying that artists should not be given these rights. They seek the benefits of the Treaty, but do not accept its obligations.

The windfall to the motion picture companies alone would be enormous, but there would be no price for them to pay. We believe the United States should place itself in the role of a leader on the moral rights issue, and not "squeak by," to borrow Professor Kernochan's phrase. How could it possibly be leadership, Mr. Chairman, to adopt this particular treaty but, in the process, disregard the moral heart of Berne?

Mr. Chairman, explicit recognition of an artist's moral rights is long overdue in the United States. We are a country rightly proud of its creativity and ingenuity. Our artists are in the world's front rank, the groundbreakers in their fields. America's artists deserve the decent respect that explicit moral rights language would bestow, and the Treaty provides us this opportunity. We believe that the spirit of the Treaty requires this from America.

DIRECTORS GUILD OF AMERICA

Statement of

Arthur Hiller

of the Directors Guild of America

Before the

Subcommittee on Courts, Civil Liberties

and the Administration of Justice

of the House Judiciary Committee

June 21, 1988

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Mr. Chairman:

We are very pleased to have the opportunity to testify this morning in favor of H. R. 2400, the "Film Integrity Act of 1987," introduced in May of last year by Representative Richard Gephardt. This bill responds to an outcry from film directors, screenwriters, critics, actors, film scholars and all segments of the creative and scholarly film community, in reaction to the defacement of motion pictures through various methods of material alteration, particularly the destructive process of colorization.

The urgency that we felt a year ago is still with us. With every passing day, more and more of the storehouse of our priceless American film heritage is being mutilated beyond recognition from its original artistic vision. Now one of our greatest classics, CASABLANCA, is nearly half-way through the ignominy of being colorized and will be broadcast next fall. Ted Turner has said he wants next to colorize CITIZEN KANE just to make people mad, though I am sanitizing Turner's language.

The Gephardt bill is a "moral rights" bill for motion pictures. It would prevent the material alteration of a motion picture such as CASABLANCA, unless the principle director and screenwriter (or their artistic heirs) both agreed to such alteration. Bowing to the practicalities of how movies are made and financed, the bill provides that this right of objection would be available only after the movie had been "published." Violation of the consent provision

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would result in the loss of copyright to the copyright holder.

We believe the bill's approach is a direct and clear response to the technological assaults on motion pictures which threaten our country's film heritage. We also believe the legislation is a modest and restrained approach that balances the interest of copyright holders against the larger societal interest of protecting our country's culture. This kind of protection is not an alien concept. We protect our parklands; and we protect great architectural works, together with historic buildings and neighborhoods.

The initial development of legislation to protect historic and architecturally significant buildings was also protracted and controversial because it was viewed as limiting the property rights of individual owners. Now, however, this legislation is accepted as an important milestone in protecting our country's architectural heritage. Indeed, rather than damaging real estate interests, Congress has gone so far as to provide tax incentives to encourage the rehabilitation of historic property.

Many of the same objections first raised to the historic preservation of buildings have surfaced again during debate on the Berne Treaty. The copyright industries have opposed moral rights as a damaging infringement on their ownership rights and the way they dispose of their property.

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-We believe both the House and Senate committees have made a wrong decision in approving Berne implementing legislation without explicit moral rights protection; and we adamantly believe that U.S. law, in any of its parts or permutations, is clearly insufficient to satisfy the language of Article 6bis. The copyright industries have prevailed on the Berne legislation, and the due rights of artists have been shunted aside.

But we also believe there is some unease on the part of a number of Members of Congress about the neglect of moral rights. This is the unfinished business of the Berne implementing legislation and today is the second in a series of hearings on specific moral rights legislation pending before this Committee. In addition, Chairman Kastenmeier and Congressman Morehead have initiated a full-scale inquiry by the Copyright Office into the effects of technological developments on the copyright aspects of motion pictures. These are all welcome steps. We hope that these ongoing hearings, together with the inquiry by the Copyright Office, will lead this Committee to adopt full moral rights protection for motion pictures and all other forms of artistic expression.

We reject the notion that if explicit moral rights protection were spelled out in federal statutes it would mean an economic upheaval for the country's copyright industries.

(Motion picture producers religiously proclaim the demise of the film industry in every negotiating session even as profits rise and business expands.) We reject the notion alluded to in this Committee's report on the Berne legislation that moral rights has caused the decline of French cinema. We reject the notion that the adoption of moral rights would trigger massive litigation on the part of the country's artists. We reject the idea that moral rights are unworkable. If this were the case, there ought to be some indication of it in European countries where moral rights are in force. We believe federal legislation, such as the Gephardt bill, would serve the long-term economic interests of the motion picture business. As in the case of historic properties, increasing the country's regard for motion pictures as an artistic medium can only lead to economic benefits. And, as a matter of justice, the Gephardt bill only elevates the position of the director and screenwriter, the principle artistic authors, into that of the legal guardians of the art form.

Mr. Chairman, we would suggest one change in the Gephardt bill as currently drafted. The right of consent in the bill is triggered after the motion picture is "published." In testimony before this Committee, we have explicitly said that this right ought to be alienable. Principle directors and screenwriters may agree to

alterations in their films. We have also testified that Congress should cap the amount of compensation that a director or screenwriter could receive for giving this permission at $1.

We would now ask, in harmony with a developing British model, that this right of consent be considered inalienable but waivable. Unlike the British model, we would wish to see the right waivable only after "publication." Whether the right is alienable or waivable the practical effect is the same, but such a change would bring the bill much more in harmony with the notion of moral rights as <u>personal</u> rights that cannot be bought or sold. And as personal rights, they cannot belong to a corporation.

Aside from the Gephardt legislation, certain other initiatives would bring some limited protection to insure the integrity of motion pictures. A collateral effort is now underway in the House Appropriations Committee, sponsored by Congressmen Foley, Yates, and Mrazek. Under this approach, a historic film commission would be established with the power to create a registry of historically and aesthetically important films. Films named to the register would be affixed with a seal designating their importance. Should films on the register be shown in a materially-altered way, the nature of that alteration would be clearly advertised on the film in the form of a label. Additionally, a computer-

colorized-film on the registry could no longer use the original title in its marketing, promotion, or distribution.

This approach offers two advantages: (1) For the first time, the government would recognize motion pictures as an art form; and (2) the viewing public would be informed that certain classic motion pictures are being presented in an altered form. This approach is clearly a step in the right direction and the Directors Guild supports it.

This truth-in-advertising approach would fairly inform an audience that what they are about to see had been changed from what was originally shown in movie theaters and, presumably, is not what the audience expects to see. Since colorization is such a drastic alteration, it also seems fair to strike the original title from the colorized edition.

There would be no prohibition to showing movies listed on the registry in an altered version; there would be no prohibition on what we directors regard as the iniquitous practice of colorization. What would be required is a certain degree of truthfulness in advertising.

We believe this national registry concept is a step in the right direction, and we shall work hard for its passage. However, it is distinctly not a moral rights approach to motion picture protection, and it falls short of providing the kind of protection, called for in the Gephardt bill, that we believe is necessary. The essence of the moral

right of integrity is the safeguarding of the work in the form in which it was originally conceived. Labeling achieves something for audiences but much less for the film artist and the artistic product itself. And, of course, the labeling remedy proposed in the Yates-Mrazek measure would only apply to those few films designated for the registry.

In another but related matter, we believe that no copyright registration should be issued by the Copyright Office of the Library of Congress for computer-altered or colorized films until Congress has stated public policy on the issue.

The Copyright Office is not a rule-making agency like the FCC or SEC; rather, it is a ministerial arm of Congress. Therefore, its June 1987 decision to register colorized films was incorrect and initiated prematurely.

The issue of colorization has brought into focus the phenomenal potential of computers to alter art works. It is important that Congress deal with the issue in a consistent, even-handed fashion. As acknowledged by the National Commission on New Technology Uses of Copyrighted Works ("CONTU"), "the dynamics of computer science promise changes in the creation and use of authors' writings that cannot be predicted with any certainty. . . .The Copyright Office in the course of its regular activities, should report to Congress if the impact of computers is found to raise

questions of copyright law or policy requiring legislative attention." Final Report of CONTU, July 31, 1978, at 46. [Emphasis supplied.]

By granting films already in the public domain the potential for seventy-five more years of copyright protection by virtue of computer-colorization, the Copyright Office has rendered a very material change in the law. The Congressionally-mandated limitation on duration has been altered. As in the case of the proper requirements for copyright protection to computer-assisted work, Congress, not the Copyright Office, should make public policy in this critical area.

With respect to decision on copyright registration, the Copyright Office can only follow the statutory requirements of the Act. It is not a policy or rulemaking authority. The June 1987 ruling was a policy decision, not simply a ministerial act. It exceeded the Copyright Office's authority and should be reversed. Congress should then initiate special deliberations on the role of computers in meeting the statutory test for authorship. But Congress' review should take place on a "level playing field" of consideration. Unless the 1987 order is reversed, the colorizers will continue to act in reliance upon the Office's decision and in all likelihood, prejudice the equitable outcome of the Congress' review.

Indeed, the Copyright Office has now initiated its own review of the entire question of computer authorship, with hearings to begin in September of this year. It seems entirely sensible that its initial ruling should be held in abeyance until these hearings and Congressional deliberation on the subject are complete.

In conclusion, I wish to thank the chairman and members of this Committee for continuing to explore the subject of moral rights and for the opportunity to testify before you today.

DIRECTORS GUILD OF AMERICA
NEWS

FOR RELEASE: June 15, 1988

CONTACT: CHUCK WARN
818/508-6088
202/857-2586

FRANK CAPRA

LETTER TO

MEMBERS OF THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS

JUNE 13, 1988

I AM PHYSICALLY UNABLE TO COME TO WASHINGTON AND TO SPEAK PERSONALLY WITH YOU OR I WOULD CERTAINLY DO SO.

IN THE APPROPRIATIONS COMMITTEE, YOU ARE ABOUT TO CONSIDER THE NATIONAL FILM PRESERVATION ACT OF 1988. THIS BILL RECOGNIZES THAT AT LEAST SOME OF THE WORK OF AMERICA'S FILM ARTISTS IS WORTHY OF CONGRESSIONAL PROTECTION FROM THE IRRESPONSIBLE ASSAULTS OF GREEDY MARKETEERS. THE BILL ASKS YOU TO SET ASIDE, FROM THE BILLIONS OF DOLLARS YOU WILL AUTHORIZE THIS YEAR, A MODEST $500,000 SO THAT FUTURE GENERATIONS WILL HAVE A CHANCE TO PERCEIVE THE BEST FILMS THEIR COUNTRY HAS PRODUCED, AS THEY WERE MEANT BY THEIR CREATORS TO BE PERCEIVED. PLEASE SUPPORT THIS BILL.

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IN 1946 I CREATED A MOTION PICTURE CALLED IT'S A WONDERFUL LIFE. IT IS A STORY INTENDED TO PROVE THE WORTH OF EVERY PERSON. IT HAS BEEN PROCLAIMED BY SOME CRITICS TO BE THE FINEST OF CHRISTMAS MESSAGES. I AM PROUD OF IT. WHEN, BECAUSE OF A CLERICAL ERROR, IT FELL INTO THE PUBLIC DOMAIN, SOME SHARPSHOOTERS, WITH NO REGARD FOR WHAT THE WRITER, THE ACTORS AND I, DID IN CREATING IT, COLORIZED IT AND THEN GOT A COPYRIGHT ON THE COLORIZED VERSION FROM OUR GOVERNMENT, THEREBY TAKING THE FILM BACK FROM THE PUBLIC AND MAKING IT THEIR OWN PROPERTY FOR THE NEXT SEVENTY FIVE YEARS.

THEY RUINED IT. THEY SPLASHED IT ALL OVER WITH EASTER EGG COLORS AND THEY RUINED IT.

IT'S A WONDERFUL LIFE WAS FILMED IN BLACK AND WHITE. THE MAKEUP, THE SETS, THE COSTUMES, THE CAMERA AND LABORATORY WORK WERE ALL DESIGNED FOR BLACK AND WHITE FILM, FOR A BLACK AND WHITE PALETTE, NOT COLOR. IT'S A DIFFERENT TECHNIQUE. THE MALE ACTORS WORE NO MAKEUP AND THE ACTRESSES, ONLY THAT WHICH THEY WORE EVERY DAY. I WANTED EVERYONE TO LOOK NATURAL. THEN CAME COLORIZATION, INCORPORATED AND POURED THEIR PASTELS OVER EVERYTHING SO THAT EVERYONE LOOKS THE SAME. EVEN THE VILLIAN LOOKS PINK AND CHEERFUL. THE STORY WAS, THEREFORE, BEEN CHANGED.

THIS MONSTROSITY IS AN EMBARRASSMENT TO ME AND MY FRIEND, JAMES STEWART.

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I APPEAL TO YOU FOR THE CHANCE FOR REDRESS AND JUSTICE; NOT ONLY FOR MYSELF BUT FOR COLLEAGUES WHO ARE NO LONGER HERE TO DEFEND THEIR REPUTATIONS FOR THEMSELVES: FOR IF THEY HAVE NOT ALREADY BEEN UNDER ATTACK BY INSULTS OF SHORTENING AND LENGTHENING, ELECTRONIC SPEEDING UP AND SLOWING DOWN, BY EDITING, COLORIZATION, RESCORING AND POSSIBLE COMPTERIZED RECASTING AND OTHER ELECTRONIC REVISIONS, THEY WILL BE SHORTLY. PROTECT THE WORKS OF CLARENCE BROWN, CHARLES CHAPLIN, MICHAEL CURTIZ, VICTOR FLEMING, JOHN FORD, D.W. GRIFFITH, HOWARD HAWKS, JOHN HUSTON, BUSTER KEATON, FRITZ LANG, ERNST LUBITSCH, ROUBEN MAMOULIAN, LEWIS MILESTONE, PRESTON STURGES, GEORGE STEVENS, KING VIDOR, ERIC VON STROHEIM, ORSON WELLES, WILLIAM A. WELLMAN, WILLIAM WYLER, AND OTHERS FROM A LONG, LONG LIST.

LET OUR WORKS HAVE A FORUM TO APPEAL FOR LIFE, WHERE, IF THEY ARE FOUND DESERVING, THEY WILL BE PROTECTED.

UP TO THIS HISTORIC MOMENT, IN THE WORLD OF AMERICAN FILM, CERTAIN SPECIAL INTERESTS HAVE HAD IT ALL - BUT SURELY THE CONGRESS WILL TAKE THIS OPPORTUNITY TO BALANCE INTERESTS AND ACKNOWLEDGE THAT AMERICAN FILM ARTISTS ALSO MAKE AN IMPORTANT CONTRIBUTION TO OUR CULTURAL HERITAGE AND TO THE HISTORY OF OUR COUNTRY.

MY LATE COLLEAGUE, JOHN HUSTON SAID IT WELL ON THE SAD OCCASION OF THE DESTRUCTION BY COLORIZATION OF HIS FILM <u>THE MALTESE FALCON</u>: "THIS IS ONLY ONE FILM AND I AM ONLY ONE DIRECTOR WHO WILL BE SUBJECTED TO AN ENTERNAL UNJUSTIFIED PUBLIC HUMILIATION, JOYFULLY PRESENTED AS

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ENTERTAINMENT BY THE VANDALS WHOM WE OF THE DIRECTORS GUILD OPPOSE TODAY. SAVE THE PAST FOR THE FUTURE; EVERY FUTURE NEEDS A PAST. PROVIDE SOME PROTECTION FOR THE FILM ARTISTS OF THE UNITED STATES AND FOR THE WORK THEY HAVE PRODUCED WHICH HAS BECOME SUCH A POPULAR ART FOR THE NATION.

THE TRUTH IS WHAT IS AT ISSUE HERE, HISTORICAL TRUTH. THAT TRUTH IS BEING CYNICALLY DISTORTED FOR FUTURE GENERATIONS BY THOSE TO WHOM THE TRUTH MEANS NOTHING."

FRANK CAPRA

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PETITION FOR SUMMONS ON A SCHEDULED DATE:

The undersigned attorney requests the Presiding Judge's authorization to serve the summons transcribed below for a scheduled date, due to the urgency of the matter.
Paris, June 25, 1988

COURT ORDER:

We, the Presiding Judge,
authorize the summons for Wednesday, September 21, 1988
at 1:30 p.m.
before the 1st Division of the Court.
Paris, June 25, 1988

SUMMONS ON A SCHEDULED DATE

before the Paris High Court
The year nineteen eighty-eight

At the request of

1) Angelica Huston
born February 8, 1951
of American nationality
residing at 862 North Beverly
Los Angeles, California

2) Daniel Huston
born May 14, 1962
of English nationality
residing at 133 N. Swall Dr.
Beverly Hills, CA 90211

3) Walter A. Huston
born April 16, 1950
of Irish nationality
residing at 6 Clifton Villas
London

4) Ben Maddow
of American nationality

Electing domicile at the law offices of Olivier Carmet

Having as their attorney Olivier Carmet
Attorney at the Paris Bar
residing at 39 avenue Victor Hugo 75116 Paris
Tel.: 45.02.14.92 Cloakroom No. E.277

who has been retained and who shall attend to the present summons and its consequences.

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You are summoned to appear on _____ at ____ o'clock

before the Paris High Court
(4 boulevard du Palais 75001 Paris)

You shall, as soon as possible, appoint an attorney at the Bar to represent you at said hearing.

Otherwise, you run the risk of having a judgment rendered against you based solely on elements furnished by your opponent.

A copy of the documents mentioned below may be read at the office of the Clerk of the Division.

ADDRESSEE of the present summons

La Société d'Exploitation de la Cinquième Chaîne de Télévision
whose headquarters is in Paris, 8th arrondissement
21 rue Jean Goujon,
in the person of its legal representatives
domiciled at said headquarters

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Whereas John Huston, an author of North American nationality, now deceased, is the co-author, along with Ben Maddow, of the script, and the director of the feature film entitled "Asphalt Jungle," filmed in black and white in 1950, produced by Metro Goldwyn Mayer.

Whereas this film - unanimously considered a major work of one of the greatest directors in the history of film - was and still is exhibited worldwide, and specifically in France under the title "Quand la ville dort."

Whereas, however, in the United States of America, Mr. Ted Turner has recently developped a computerized colorization process for audiovisual works originally filmed in black and white.

Whereas using this process, Ted Turner - disregarding the opposition declared by the entire community of American filmmakers - has begun colorizing, for commercial exhibition, the greatest American black and white film classics, including the film "Asphalt Jungle."

Whereas, under these conditions, the Société d'Exploitation de la 5ème Chaine de Télévision (hereinafter Channel 5) announced it would broadcast the colorized version of the film "Asphalt Jungle" on its network on Sunday, June 26th at 8:30 p.m.

Whereas, in spite of the explicit request by the Société des Auteurs et Compositeurs Dramatiques telexed on June 16, 1988 to Channel 5, the latter has to date refused to cancel said colorized work.

Whereas, however, it appears in the case in question that in a statutory order dated June 24, 1988, the First Deputy Presiding Judge of the Paris High Court ordered the broadcast of the disputed work and any other work by John Huston postponed until the matter could be heard in court.

Whereas, in fact, under French law, foreign, and in particular North American authors constantly enjoy the protection afforded in France as a moral right by the French Law of March 11, 1957, particularly in virtue of the provision of Article II of the Universal Copyright Convention.

Whereas, this being the case, John Huston, now represented by his heirs, appears to have grounds for taking advantage of the provisions of Articles 6, 16 and 47 of the Law of March 11, 1957, amended by the Law of July 3, 1985.

Whereas the broadcast in France of the colorized version of the

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film "Asphalt Jungle," should it occur, would constitute a particularly serious breach of the author's moral right.

Whereas, moreover, John Huston never in his lifetime consented to the colorization of any of his audiovisual works.

Whereas, precisely the opposite is true - in his lifetime said director manifested his unreserved and definitive opposition to the use of such a process on any of his works.

Whereas it thus appears that the intended broadcast directly contravenes the express will of the deceased and thereby constitutes a particularly intolerable breach of the latter's moral right.

Whereas it definitively appears that the disputed broadcast, should it be allowed to occur, would not fail to cause, were it not prevented, exceptionally serious damages for which there could be no equivalent compensation.

Whereas, consequently, may it please the Court to forbid Channel 5 from proceeding with the broadcast of the colorized version of the work entitled "Asphalt Jungle" by John Huston, as well as any other work written or directed by the latter which Channel 5 might substitute for the work in question.

Whereas, finally, due to requirements of the present proceedings, the plaintiffs have been obliged to undertake expenses which are partially unrecoverable.

Whereas it would be particularly inequitable, under the circumstances in question, that they be responsible for same.

May it please the court, consequently, to sentence Channel 5 to pay the plaintiffs the sum of 10,000 francs under Article 700 of the NCPC /New Code of Civil Procedure/.

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AND NOW THEREFORE

/May it please the Court/

- to pronounce and adjudge the Hustons' petition admissible and substantiated,

/and/ consequently

- to prohibit the Société d'Exploitation de la 5ème Chaîne de Télévision from proceeding with the broadcast of the colorized version of the work entitled "Asphalt Jungle" by John Huston, as well as any other work written or directed by the latter which Channel 5 might substitute for the work in question

- sentence Channel 5 to pay the Huston heirs the sum of 10,000 francs under Article 700 of the NCPC

- sentence it /Channel 5/ to pay all costs.

SUBJECT TO ALL RESERVES
AND MAY JUSTICE BE DONE

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LIST OF DOCUMENTS SUBMITTED

1) Data sheet on the film "Quand la ville dort"

2) Telex from Mr. Hubert Astier to Channel 5 dated June 16, 1988

3) Speech by John Huston before Congress on April 21, 1987

4) Speeches of Woody Allen, Spielberg, Forman and Lucas before the American Congress

5) Power of attorney from Huston group and Ben Maddow

6) Petition by the SACD /Société des Auteurs et Compositeurs Dramatiques/

7) Petition from the Barcelona Festival

8) Letter from Forman, Lumet and Pollack on Directors Guild letterhead

9) Telex from the Minister of Culture, Jack Lang

10) Draft bill from the American Congress

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Figaro, June 25, 1988

MEDIA
Broadcast of
Colorized Version
of "Asphalt Jungle"
Forbidden

Mrs. Huguette Le Foyer de Costil, First Deputy Presiding Judge of the Paris High Court, in a summary court order rendered yesterday evening, forbade the broadcast scheduled for Sunday at 8:30 p.m. of the colorized version of John Huston's film "Asphalt Jungle" ("Quand la ville dort"), filmed in black and white in 1950. The magistrate, who allowed the request of John Huston's heirs under "protection of works of art," also forbade the broadcast of any of Huston's works which have undergone the colorization process. "The legal debate has perhaps been temporarily settled, but the cultural debate is not over," commented last evening Philippe Ramond, General Manager of Channel 5, which is appealing the decision. The case will again be heard today. The public debate which the channel had scheduled for Sunday night, focussing on the colorization of Huston's film, has been cancelled.

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Le Monde
5 rue des Italiens
75427 Paris cedex 09
Tel.: 42.47.97.27

June 20, 1988

"Colorization": The Debate is On

When it programmed the colorized version of John Huston's "Quand la ville dort," Channel 5 let loose a tempest in France. The directors association didn't pass up the chance to react vigorously against what it considers a breach of copyright.

When it decided to celebrate film in its own way by broadcasting the "colorized" version of Huston's Asphalt Jungle (Quand la ville dort), Channel 5 let loose the start of quite a tempest. Already, in a communique signed Bertrand Tavernier and Marcel Ophuls (le Monde dated June 12-13, 1988), the directors association denounced "this new breach of the great filmmakers' copyright." It also, along with the SACD, gave Atty. Choukroun the task of studying the case and the possibilities of taking action against the channel in application of the law which guarantees copyright protection. Finally, summary proceedings were to be instituted by Huston's heirs.

In the United States, the new electronic, ultrasophisticated and costly (1) "colorization" process, available for approximately the past three years, now allows a few minutes of film per day to be computer painted. The investment has become cost effective. Ted Turner recently hoped to make 1.6 million dollars in the first year of operations (videocassette and TV airing) with just the "colorized" versions of two Errol Flynn films by Michael Curtiz. That represents eight times more than /they made/ in ten years.

In the United States, moral rights not yet having been accorded author-directors unless stipulated by contract or specific action based on "false designation of origin," the battle of the opponents of "colorization" can often be just symbolic. And to those who, like Woody Allen or Steven Spielberg who call it Bsacrilege and distortion of artworks, or like Huston who cried when he saw the results of his Maltese Falcon and who took his protest all the way to Congress, the proponents of "colorization" reply, not without cynicism, that there is no need to get melodramtic about it.

/They claim/ the negative is preserved and the process gives new life to films by giving them a broader audience, attracted by the color, specifically the younger generation. It is also fair tactics to point out that the protests against commercial breaks are rather weak and that, in any event, a film made for the

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theater which is broadcast on tv, changes media and is not viewed under normal conditions. And to cite the massacre of Lawrence of Arabia when it is shown on the small screen. Finally, one last argument: the television viewer who prefers the black and white of the original version can always turn the knob on his set and make the color disappear. Nonetheless. There is something abnormal in this power to so dispose of a work belonging to cinematographic heritage without the consent of its author.

In France, the moral right of authors is protected. This being a matter involving a foreign filmmaker, the problem could be more complex. In 1955, the Paris Court of Appeals authorized Charlie Chaplin to assert his moral right in France. That meant that this right was connect to the person. A precedent from which Huston's heirs could benefit if the court confirms that jurisprudence by according a foreign director the protection it accords its nationals.

JEAN-LOUIS MINGALON

(1) The Color Systems Company declares that it uses more than 20 million dollars worth of machines.

* Sunday the 26th at 8:30 p.m. on Channel 5

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Monde, June 27, 1988

Legal Battle over a "Colorized" Film

In the controversy over the "colorization" of black and white films (le Monde, June 25), the first round was won by the purists. In fact, on June 24th in a statutory decision by the Paris High Court, Channel 5 was prohibited from airing its scheduled broadcast of John Huston's film Asphalt Jungle (Quand la ville dort) on Sunday evening at 8:30 p.m. In her order, the Judge declared that this decision "is based on equilibrium between the necessary protection /of the author's moral right/, inasmuch as the court has not made a final ruling."

While the Société des Auteurs et Compositeurs Dramatiques (SACD) immediately hailed this "first victory," reaffirming "the primacy of the author's moral right," the American Turner Entertainment Company (owner of the John Huston film) made it known that it would, on Saturday June 25th, petition the Paris Court of Appeals for Channel 5 - which /also/ appealed - to be allowed to broadcast the film. The case is to be examined Saturday, late in the afternoon, by the Court of Appeals.

Regretting, as far as it is concerned, "having settled by law a problem of culture which interests all French television viewers," Mr. Philippe Ramond, General Manager of Channel 5, announced that, in the event the Court of Appeals confirms the High Court's decision, Channel 5 will broadcast Francis Ford Coppola's film Rusty James, a black and white film whose last image is in color...

A.W.

* Read the Monde Radio-Télévision file on colorized films

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LIBERATION, JUNE 20, 1988

Channel 5 Can't Broadcast Colorized Verson of "Asphalt Jungle"

Huguette Le Foyer de Costil, First Deputy Presiding Judge of the Paris High Court, in a statutory order rendered Friday, forbade the broadcast scheduled for Sunday evening at 8:30 p.m. on Channel 5 of the colorized version of John Huston's film Asphalt Jungle, the French version of which is entitled Quand la ville dort.

The magistrate, who thereby allowed the petition of John Huston's heirs, also forbade the broadcast of any other work by Huston which has undergone the colorization process.

At Thurday's hearing, the judge followed the arguments presented by Attorneys Olivier Carmet and Henri Chouckroun, counsel for the filmmakers' heirs and the authors association, which purported that such a transformation was a breach of the author's moral right.

In response to the arguments of Atty. Bernard Jouanneau, who stressed the economic interests of Channel 5, the magistrate declared that the magnitude of the damages incurred by Channel 5 due to the ban "should not go unrecognized." But she added that "when directors take such special care to research the contrasts obtained through the meticulous choice of colors filmed, the broadcast of John Huston's work could cause intolerable and irreparable damage for those who defend the integrity of the work (...), call for compliance with the will of John Huston..."

The Société des Auteurs et Compositeurs Dramatiques (SACD) and the Société des Réalisateurs de Films (SRF) "joyously hailed this first decision reaffirming the primacy of authors' moral rights and hope that this first defeat for "colorizers" will put a stop to the surge in anti-creative venality."

Channel 5 decided to appeal. The case will be heard Saturday in the late afternoon before the Paris Court of Appeals.

AFP

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/cover letter from Janine Lorente in English/

ENGROSSMENT -

REPUBLIC OF FRANCE
IN THE NAME OF THE FRENCH NATION

General Index No.: 88-11420

SCHEDULED DATE: JUNE 25, 1988

appeal of a statutory order rendered June 24, 1988 by the presiding judge of the Paris High Court

LEGAL ASSISTANCE
Application date
Applicant

Date of closing

PARIS COURT OF APPEALS
14th Division, Section A

JUDGMENT OF JUNE 25, 1988
(Unique No. pages

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in the person of its CEO

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APPELLEE,
Represented by SCP FISSELIER CHILOUX BOULAY, Solicitor
Assisted by Atty. SERRA, Trial Lawyer

COMPOSITION OF THE COURT:
During the proceedings and deliberation:

PRESIDING JUDGE: Mrs. REMUZON

ADVISORS: Mrs. GAUTIER
Mr. AQUENIN

COURT CLERK: C. FAUCHERE

PROCEEDINGS: Public hearing on June 25, 1988 at 5 p.m.

JUDGMENT: After due hearing of all parties
Pronounced publicly by Mrs. REMUZON,
Presiding Judge, who signed the Minutes along with Ms FAUCHERE,
Court Clerk.

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The Société d'Exploitation de la Cinquième Chaîne de Télévision, Channel 5, entered a specific appeal of the statutory order rendered June 24, 1988 by the Presiding Judge of the Paris High Court which:

- said that, under the circumstances, the colorized version of the film entitled "Asphalt Jungle" cannot be broadcast by Channel 5,

- said that any other work of John Huston which Channel 5 might substitute for the film "Asphalt Jungle" cannot, under the circumstances, be broadcast insofar as it shall have undergone said colorization process,

- said there are no grounds for application of Article 700 of the NCPC /New Code of Civil Procedure/,

- made each party responsible for its own costs.

The first Judge gave a faultless reporting of the facts to which this Court makes reference.

The Appellant, Channel 5, based on Article 809.1 of the NCPC, asserts that the Judge must take note of the manifest nature of the discord and the obviousness of the damage or risk cited, especially when, as in the case in point, the exercising of a public liberty is in dispute; it believes preference must be given to public liberty.

In application of Article 808 of the NCPC, it maintains that the powers held by a judge in a summary procedure under said article cannot be concurrent or cumulative with those held under Article 809.

It brings up the existence of serious questions which were, moreover, recognized by the first Judge, and it claims that the postponement of the broadcast, strictly equivalent to a prohibition, which in any event is not binding upon the trial Judge, is not a measure justifiable by the existence of a dispute.

It concludes by requesting the annulment of the order.

It requests that it be subsidiarily acknowledged that it is offering to broadcast, before the screening of the colorized version of the film "Asphalt Jungle," a notice to the television viewers in the following form:

"We remind our television viewers that they have the option or the liberty to watch this film in black and white only, in accordance with the wishes of John Huston, the director, by using the device on their set or remote control that eliminates color."

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The Turner Company, appellee, submitted its conclusions which seek a judgment:

- that the decision be reversed;

- that the Huston heirs have in no way demonstrated that they are acting in the capacity of successors to the author of "Asphalt Jungle";

- that Turner has proven his capacity as author under American law;

- that the Huston heirs are therefore not entitled to take action or request the measures cited in their summons;

- that they /the measures/ must be declared inadmissible;

It suggests they /the heirs/ be jointly and severally sentenced to pay a fine of 30,000 francs to partially cover the unrecoverable expenses incurred by Turner due to the present proceedings, as well as the expenses of the summary action and the appeal;

It maintains that it is owner and successor of the rights of the author, the original owner of the film, and that it is moreover the owner of the color adaption of said film.

In addition, it claims that it obtains its capacity as successor of the author by virtue of American law, being the sole owner of all rights to the film "Asphalt Jungle."

It also asserts that, even if it is French law that is to determine /the case in question and/ in France there is the system of protection of artworks, this cannot be the law used to determine ownership and authorship of works made and created in the United States of America by American nationals under American contracts;

It adds that the "colorisation" process does not cause the disappearance of the original work, which lives on; to the contrary, it implies prior restoration thereof.

The Huston heirs and Mr. Ben Maddow, appellees, maintain:

- that the breach of their rights takes on a character of exceptional gravity;

- that, in France, John Huston has the benefit of moral right under French law;

- that there is manifestly illicit discord or imminent damage under Article 809 of the NCPC, and, in any event, there is

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a dispute under Article 808 of the NCPC, justifying the ordered postponement measure.

They conclude by requesting confirmation of the order.

The Société des Réalisateurs des Films (S.R.F.) maintains that, in offering for the first time in France a colorized version of a film work, Channel 5 is prepared to cause a manifestly illicit breach of John Huston's moral right

- that, moreover, its initiative constitutes a notorious abuse of utilization contrary to Article 20 of the Law of March 11, 1957 which would entail damages "on an incalculable scale" for a great number of works

- it points out that Channel 5 is causing a breach of Article 1 of the Law of September 30, 1986

It concludes by requesting confirmation of the decision.

It requests the sum of 20,000 francs based on Article 700 of the NCPC.

The Court refers, for further explanation of the facts and the proceedings, to the disputed order, to the request for a scheduled appeal and to the conclusions of the appeal.

RELATIVE THERETO:

Relative to the demurrer:

Whereas, while it is evident that the agreements between John Huston and the production companies with respect to the exhibition of his films are governed by American law, Article 1 of the Law of March 11, 1957, which may be cited under Article 11 of the Civil Code, in France, by a foreign author, implements a moral right connected to the person of that author and therefore to that of his heirs;

Whereas it follows that the latter are entitled to institute proceedings to defend that right;

Whereas the Turner Company's demurrer is groundless;

Relative to the appeal:

Whereas, by issuing a prohibition in the case in point, to broadcast the colorized version of the film entitled "Asphalt Jungle" by Channel 5, the first Judge correctly evaluated the facts in the matter, based on relevant grounds which this Court adopts, except the declaration that the survival of moral rights brings up a serious difficulty when, as specified above, Article

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1 of the Law of March 11, 1957 is applicable to the heirs in the case in question;

Whereas it is sufficient to add that the conditions prescribed by Article 809 Section 1 of the NCPC are met in the case in question and that a protective measure is necessary in order to prevent imminent damages;

Whereas it can legally be maintained that the addition of color to a film conceived and created in black and white is indeed an alteration of the original work;

Whereas that process, if not expressly authorized by the author or his heirs, constitutes a breach of their rights, entailing certain damages;

Whereas in the case in point that damage is imminent and would be irreversible, since the screening scheduled by Channel 5 was programmed for this June 26th;

Whereas, in addition, all parties admit that John Huston, in his lifetime, always opposed the colorization of his films, even asking the American congress, "At least preserve the memory of the technical means available at the time and the manner in which we used them."

Whereas at the time when John Huston assigned his rights to M.G.M., the concept of the alteration mentioned among the assigned rights could obviously not have referred to the colorization process which did not yet exist;

Whereas, finally, the confusion created in the minds of television viewers, in spite of any technical explanations which might be provided, is in itself a breach of individual liberty which is a harmful element;

Whereas fairness does not warrant the application of Article 700 of the NCPC in favor of the appellees;

AND NOW THEREFORE:

/The Court/ declares the Turner Company's demurrer groundless;

Confirms the statutory order rendered June 24, 1988 by the Presiding Judge of the Paris High Court;

Declares there are no grounds for application of Article 700 of the NCPC;

Sentences the Société d'Exploitation de la Cinquième Chaîne de Télévision and the Turner Company to pay the costs of the

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appeal;

Authorizes SCP VERSUN-GASTOU and Atty. BAUFUME to benefit from Article 699 of the NCPC.

THE PRESIDING JUDGE
/signature/

THE COURT CLERK
/signature/

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In witness whereof, the minutes of the present decision have been signed by the Presiding Judge and the Court Clerk.

Their signatures follow.

CONSEQUENTLY, THE REPUBLIC OF FRANCE commands and orders:

All bailiffs, when so required, to execute the present order;

All Public and High Court State Prosecutors to uphold it;

All Chiefs and Officers of the law to enforce it when so legally required.

CERTIFIED TRUE ENGROSSMENT, issued by us, the undersigned Head Court Clerk, at the Office of the Court Clerk Secretariat of the Paris Court of Appeals.

THE HEAD COURT CLERK
/signature and seal/

No words or lines crossed out and nullified
/initials/

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COMMENT 8A

DIRECTORS AND FILM PRESERVATION

The Directors Guild of America, and its member-directors and their assistants, have been concerned with the preservation of films and of the creative work of filmmakers for over half a century. As one university film archivist spontaneously stated when queried for this report, "Directors -- at least all I have ever talked to -- take film preservation as something of a Holy Grail." This urge toward preservation, and where necessary restoration of work to its original form, as illustrated in detail below, is perhaps best exemplified by the initial gift to the Film Department of the Museum of Modern Art of the films, papers, and business records of director David Wark Griffith in 1936. The only filmmaker honored with a commemorative United States postage stamp, Griffith was in a unique position to make such a donation, which to this day forms the core of the Museum of Modern Art's collection, since Griffith was both the creator and the copyright owner of his work. Few directors in later times were also the commercial owners of their work, and the sensitivity of a director to the preservation of creative artistry as exemplified by Griffith stands to this day in sharp contrast to the common actions of corporate motion picture men who casually and habitually destroyed "old" pictures---often to recapture and resell the silver halides contained in the photo-

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sensitive emulsion---by the thousands at the same time that Griffith was providing for the preservation of his work and in so doing creating a repository that is now known as a national treasure.

ARCHIVES

A partial listing of directors who have followed in the steps of D. W. Griffith and made donations to just three of the nation's major film archives can be found at the end of this document in Appendix A. Working archivists are well aware that directors have only minimal influence over the physical disposition of their work, owing to the flawed traditions of American copyright law. Yet they are also aware that it is frequently the director who will lend his or her influence or moral suasion to consummate a corporate donation and identify holders of physical materials for preservation.

RESTORATIONS

For many years directors have also lent their creative skills and expertise to the restoration of films to their original form after they were truncated in their original release by distributors, producers, exhibitors, or the sheer passage of time. The most current example is Sir David Lean, who worked without fee on the restoration of his film Lawrence of Arabia.

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For **Lawrence**, some elements of the reconstruction were aided by directors Steven Spielberg and George Lucas, as well as by donated time and talent from several of the original actors. Most such restorations are undertaken at the behest of directors, and when accomplished are done years after the "commercial" viability of the picture is over. It is rare to find a major re-release of a restored picture in theatres, as with **Lawrence of Arabia**; more common is a restoration done with very similar donations of time and effort which is shown in a few archives, film festivals and an occasional art theatre, as with director Budd Boetticher's meticulous reconstruction of his original version of **The Bullfighter and the Lady**, originally released in 1951 and restored in 1985. This commitment to the integrity of their work is represented as well by the declaration of the worldwide filmmaking community at the Barcelona Film Festival in 1987, where several hundred directors signed a statement calling for the preservation of the integrity of their work as it was originally created. A complete listing of signatories can be found in Appendix B.

Film directors, in particular, have long tried to preserve their original dramatic vision of their work, and have been prevented by the current state of copyright law from redress when their work is mutilated by copyright holders. Director George Stevens produced a most successful motion picture titled **A Place**

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in the Sun in 1951, starring Montgomery Clift and Elizabeth Taylor. The film was a boxoffice hit, and received Academy Awards for Best Director, Best Screenplay, Best Cinematography (Black-and-White), Best Editing, Best Score, and Best Costume (Black-and-White), and nominations for Best Picture, Best Actor. When delivered by the producers, Paramount Pictures Corporation, to network television, the National Broadcasting Company, NBC wished to re-edit the picture without Mr. Stevens' participation or approval, no doubt feeling they could improve on the picture. On the basis of copyright law, the Federal Court of Appeal for the 2nd District ruled in 1969 against Mr. Stevens' protests to the changes in the picture. A similar case was lost in 1966 by director Otto Preminger, over changes made without his participation in the successful motion picture **Anatomy of a Murder**, which had also been a very popular and successful film in its original form, and received Academy Award nominations for Best Picture, Best Actor, Best Screenplay, Best Supporting Actor (2), Best Cinematography (Black-and-White) and Best Art Direction. Even though both of these key court cases were lost by film directors, there has been a continual effort by film creators to preserve the integrity of their work as it is shown to the public; Warren Beatty, Robert Aldrich, Franklin Schaffner, Terry Gilliam, Dan Taylor and many other directors have struggled to preserve their original visions--and most often the original

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release vision--in court cases and arbitrations with varying results based largely on clauses in their personal service contracts. Aside from the prominence of the individual director and his or her ability to include especial rights in employment contracts, there is no protection in U.S. law for the preservation of the original form of a work of motion picture art, even once that form has been thoroughly established through widespread public exhibition.

COLOR PRESERVATION

A more positive and successful campaign of motion picture directors to preserve their work, undertaken within the motion picture industry solely from the director's urgent recognition of the destruction of their work over time, and, largely, after its commercial fate was determined, was led in 1980 by director Martin Scorsese and concerned the issue of fading colors in full-color motion pictures. At that time, the principal color motion picture stocks manufactured by the Eastman Kodak Company and used almost exclusively in the American film industry by all the major and minor studios and producers, was subject to significant deterioration of color within a few months and irretrievable fading and disappearance in a few years. And, in 1980, neither the manufacturer nor the production companies were encouraging any significant research into the problem. To them, the short

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commercial life of a motion picture was the only business concern. Asking for immediate redress of the problem, Martin Scorsese organized an ad-hoc group of film directors, archivists, and other leading figures from the creative community, primarily relying on film directors, and petitioned the Eastman Kodak Company to assume a major role in the research and development of a stable color film stock. Over 100 Film directors signed this plea, and a full list can be found in Appendix C. Widely reported in the trade and mass media, this campaign led by motion picture directors was highly successful, as the Eastman Kodak company in 1982 developed Color Print Film 5384 in 1982 at no increase in cost to purchasers. This new stock with stable color chemistry lasts 88 to 100 years before showing signs of deterioration, rather than the nine to fifteen years of the previous standard film. The text of Martin Scorsese's original letter to Kodak, plus his recent remarks on the subject at Gracie Mansion in New York City are attached at Appendix D.

DIRECTORS GUILD SPECIAL PROJECTS

The Directors Guild of America, as the collective bargaining organization for motion picture and television directors and their assistants, is primarily a labor union in the motion picture industry. It is not a production entity, distributor, exhibitor, or network. Its main responsibility is to negotiate a

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basic agreement with producers, and to oversee the implementation of that agreement on behalf of its members. At the same time, the director's express commitment to film preservation, to the history of film and American culture, and to the educational process of sharing the skills of its experienced members with those less experienced is illustrated by the fact that the Guild is the only organization within the motion picture industry to maintain a full-time staff in both New York and Los Angeles whose responsibilities are explicitly divorced from matters of labor negotiation and concern the history, preservation, and educational aspects of the directorial experience. This staff is led by Deac Rossell, the National Special Projects Officer in Los Angeles, who came to the Guild after fourteen years on the staff of the Museum of Fine Arts, Boston; and Dr. Brian Rose, Special Projects Officer in New York, who came to the Guild from his post as Associate Professor of Media Studies at Fordham University.

COLLECTIONS

The Special Projects division of the Directors guild is devoted to preserving the directorial experience. It has established archival collections at the Louis B. Mayer Library of the American Film Institute in Los Angeles, for papers, scripts, designs, memoranda, business records, and other aspects of directorial work, and a collection at the Film and Television

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Archives of the University of California, Los Angeles, for film and television negative and positive print materials, including a large and significant collection of original footage and outtakes from twenty years of documentaries about directors at work, which importantly supplements their film holdings from other sources. In addition, Special Projects has aided donations to the archives of the Museum of Modern Art, New York; the Library of the University of Southern California; and many other such institutions.

ORAL HISTORY

Special Projects also maintains an ongoing published Oral History program, which preserves the experiences of significant Guild members in all categories as an aid to the history and understanding of the craft of the director and the director's assistants. This is the only program of its kind in the American motion picture industry. Archival transcripts of oral history interviews are provided by the Guild to the Museum of Modern Art, New York; the Center for Theatre Research, University of Wisconsin, Madison; and the Film and Television ARchives, University of California, Los Angeles; at no cost and as an aid to scholars in the East, Midwest, and West. Published versions of some oral histories are continuously in print through the academic and library publisher Scarecrow Press of Metuchen, New

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Jersey. A list of the Guild's oral histories to date can be found in Appendix E.

EDUCATIONAL FILMS

DGA Special Projects has also directly produced or significantly aided in the production of several television series or documentary films which preserve the experiences of American film directors of exceptional merit, and illustrate their working methods. In particular, the Public Broadcasting series **The Men Who Made the Movies** examined the life and work of directors Frank Capra, George Cukor, William Wellman, Howard Hawks, Vincente Minnelli, Alfred Hitchcock, King Vidor, and Raoul Walsh. The series **Directors at Work**, produced by the Guild, examined the creative relationships between directors and performers and between directors and the image, while examining the working methods of over a dozen filmmakers. Appendix F gives a listing of DGA educational film work.

EDUCATION

Special Projects is constantly in touch with the nation's academic and film cultural community, to provide a bridge between practicing motion picture professionals and the historic, preservation, and educational communities. For eight years, the Guild has organized (in some years in collaboration with the

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American Film Institute) the Directors Guild Educator's Workshop, an intensive seminar which gives college and university production teachers a unique opportunity to observe contemporary production practices on current film and television sets. Speakers, visiting faculty, and workshop leaders have been provided to over 125 American colleges and universities over the past dozen years, and there is a constant flow of advice and counsel with museums, film centers, and film festivals as well.

Among other programs, Special Projects additionally organizes a full program of classes and seminars for Guild members in both New York and Los Angeles. While one area of this schooling is concerned with keeping members aware of new techniques and processes in production, other aspects of the program are organized with the express intent of preserving the experiences of distinguished members and handing them down within the Guild membership as valued and treasured skills which may be helpful to younger and less experienced members. To this end, the Guild has organized examinations of the careers and work of eminent directors like Orson Welles, Fred Zinnemann, John Huston and John Cassavetes, among many others. Full panels involving the entire creative team from major television and film productions are also regularly organized, from the team that created **Fedora** with Billy Wilder to Alan Parker and the colleagues who worked together on **Mississippi Burning**. In all

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areas, in an extensive program unique among the creative community in the motion picture industry, DGA Special Projects organizes about 50 classes and workshop seminars for members each year.

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APPENDIX A

Partial list of director-donors to the Museum of Modern Art, New York; the International Museum of Photography, George Eastman House, Rochester; and the UCLA Film and Television Archives, Los Angeles.

Cecil B. DeMille
Daniel Petrié
Alex Cox
Michael Minor
Hal Cooper
Roger Englander
Norman Lloyd
Hy Averback
Ira Skutch
Richard Dunlap
George Pal
Hal Ashby
Haskell Wexler
Budd Boetticher
Stanley Kubrick
Otto Preminger
Robert Wise
Frederick Wiseman
Lothar Wolf
Clint Eastwood
Sidney Lumet
Noel Black
Arthur Hiller
Stanley Kramer
King Vidor
William Wyler
Jim Jarmush
Chuck Workman
Emile de Antonio
David Wark Griffith
Allen Reisner
Seymour Berns
Paul Bogart
Norman Felton
Theodore J. Flicker
John Frankenheimer
Glenn Jordan
Sheldon Leonard
Delbert Mann
Robert Ellis Miller
George Schaefer
Ralph Nelson
Paul Nickell
Donald Richardson
William Hobin
Barry Shear
David Swift
Bud Yorkin
Norman Maurer
Fielder Cook

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APPENDIX B

In a manifesto published by the Barcelona Film Festival in 1987, film directors througout the world stated their impassioned wish to have "their work exhibited throughout the world in the form in which it was originally released." The signatories were as follows:

UNITED STATES
Alan Alda
Woody Allen
Lou Antonio
Karen Arthur
Hal Ashby
John Astin
Hy Averback
John Avildsen
John Badham
Ralph Bakshi
Richard L. Bare
Paul Bartel
Harold Becker
Richard Benjamin
John F. Binder
William Peter Blatty
Budd Boetticher
Paul Bogard
Peter Bogdanovich
Martin Brest
Mel Brooks
Richard Brooks
Barry Brown
Allan Burns
Joe Camp
Roy Campanella
John Carpenter
Thomas Carter
Steven Carven
Gilbert Cates
Don Chaffey
Matthew Chapman
Byron Chudnow
William Claxton
Graeme Clifford
Eugene Cohn
Kevin Connor
James Collier
Alan Cook
Fielder Cook

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Jack Coufer
Robert Culp
Melvin Damski
Dom De Luise
Brian De Palma
Stanley Donen
Richard Donner
Robert Downey
Michel Dugan
Vince Edwards
Charles Eastman
Abel Ferrara
Richard Fleischer
Melvin Frank
William A. Fraker
John Frankenheimer
Jerrold Freedman
William Friedkin
Samuel Fuller
Richard Franklin
James Goldstone
Michael Gordon
David Greene
Michael Grillo
Ulu Grosbard
Randa Haines
Curtis Harrington
Sidney Hayers
Monte Hellman
Buck Henry
Colin Higgins
Jack Hively
Allan Holzman
Tom HOlland
Jerry Hooper
Tobey Hooper
Stanley Jaffe
Norman Jewison
Larry Just
Jeremy Kagan
Lawrence Kasdan
Philip Kauffman
Robert Kaylor
Burt Kennedy
Irvin Kershner
Barbara Kopple
Buzz Kulik
John Landis
Walter Lang, Sr.

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Leo Malcolm
Mark Lester
Peter Levin
Bob Lewis
Lynne Littman
Sidney Lumet
David Lynch
Tom Mankeiwicz
Leslie H. Martinson
Daniel Mann
Vincent Mcveete
Andrew Marton
Paul Mazursky
Jim McBride
Russ Meyer
Richard Michaels
Michael Miller
Phlippe Mora
Howard Morris
Gilbert Moses
Robert Mulligan
Richard Moore
Ronald Neame
Gene Nelson
Arthur Nadel
Paul Newman
Michel O'Donohue
Robert Vincent O'Neal
Gert Oswald
Norman Panama
Bruce W. Paltrow
Robert Parrish
Arthur Penn
Frank Perry
John Peyser
Frank Pierson
Ernest Pintoff
Abraham Polonsky
Sidney Pollack
Ten Post
Richard Quine
Bob Rafelson
Gene Reynolds
David Lowell Rich
Jerome Robbins
Mark Rydell
Stuart Rosenberg
Sutton Roley
Ralph Rosenblum

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David Saperstein
George Schaefer
Franklin Schaffner
William Sachs
Dennis Sanders
Martin Scorsese
Susan Seidelman
George Sidney
Don Siegel
Joan Micklin Silver
Elliot Silverstein
Gilbert Shilton
Jack Shea
Vincent Sherman
tony Scott
Jack Smight
Nicholas Sgarro
Oliver Stone
George Stevens, Jr.
Paul Stanley
Leonard Stein
Joseph Struck
Jeannot Szwarc
William Tannen
Don Taylor
Andre de Toth
Frea Walton
Charles Marquis Warren
Peter Werner
Haskell Wexler
Gene Wilder
Paul Williams
Robert Wise
Chuck Workman
Fred Zinnemann
charlotte Zwerin
Frank Zuniga

EUROPE

Chantal Ackerman
Giuseppe Agata
Javier Aguirre
Ali Akika
Jean Gabriel Albicocco
Sebastien Almeida
Nestor Almendros
Pedro Almodovar
Dennis Amar

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Alfredo Angeli
Theodore Angelopoulos
Jean Jacques Annaud
Raymond Antoine
Massimo Antonelli
Michelangelo Antonioni
Vicente Aranda
Giorgio Arlorio
Antonio Artero
Alexandre Astruc
Nicola Badalucco
Philippe Baraduc
Juan Antonio Bardem
Elio Bartolini
Cecilia Bartolome
Jordi Bayona
Jean Becker
Paul Beckuart
Hans van Beek
Francesc Bellmunt
Marco Bellocchio
Yannick Bellon
Carlos Benpar
Luc Beraud
Christian Berger
Piero Bernardi
Bernardo Bertolucci
Luna Bigas
Gerard Blain
Bertrand Blier
Marcel Bluwal
Roberto Bodegas
Jacques Boigelot
Yves Boisset
Mauro Bolognini
Jose Luis BOrau
Marcel Bozzuffi
Antonello Branca
Karin Brandauer
Robert Bresson
Franco Brogi Taviani
Edith Bruck
Franco Brusati
Juan Luis Bunuel
Patrick Cabovat
Jordi Cadena
Stefano Calanchi
Jaime Camino
Edmond Caprasse

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Norbert Carbonaux
Carlo di Carlo
Henning Carlsen
Fabio Carpi
Jean Michael Carre
Frank Cassenti
Liliana Cavani
Suso Cecchi d'Amico
Francois Chardeaux
Paolo Cingolani
Philippe Clair
Claire Clouzot
martin Cohen
Paul Cohen
Jean Colette
Luigi Comencini
Luis Jose Comeron
Philippe Condroyer
Patrick conrad
Sergio Corbucci
Joao Correa
Constantin Costa-Gavras
Francesco Crescimone
Damiano Damiani
Jean Francois Davy
Jean Maria Deconinck
Liliane De Kermadec
Jean Delannoy
Andre Delvaux
Richard Dembo
Lino Del Fra
Jacques Demy
Michel Deville
Stephane Dikman
Jacques Doniol-Volcroze
Domenique Doussaint
Michel Drach
Jean Dreville
Charlotte Dubrevil
Bertrand Effenterre
Roberto Enrico
Victor Erice
Rob van Eylk
Luigi Vaccini
Federico Fellini
Giuseppe Ferrara
Marco Ferreri
Peter Fleischman
Marcello Fondato

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Domenec Font
Brian Forbes
Rene Foret
Josep M. Forn
Jose Maria Forque
Claude Francios
Peter Freullien
Santiago Lapeira
Michele Gandi
Ronald Geerts
Bruno Di Geronimo
Luigi Gianni
Rene Gilson
Antonio Gimenez Rico
Franco Giraldi
Wolfgang Gluck
Claude Goretta
Pierrre Grannier Deferre
Jordi Grau
Emilio Greco
Ugo Gregoretti
Doni di Gregorio
Agnes Guerin
J.L. Guerin
Tonino Guerra
Massimo Guglielmi
claudine Guilmain
Manuel Gutierrez Aragon
Michel Gyory
Peter Hajek
Andre Halini
Marion Hansel
Guido Hendericky
Gonzalo Herralde
Luc de Heusch
Laurent Heynemann
Med Hondo
Hugh Hudson
Matti Ijas
Age Incrocci
Joris Ivens
Ives Jansen
Alain Jessua
Pascal Kane
Anika Kanrismaki
Elem Klimov
Paul Koeck
Andras Kovacs
Kathe Kratz

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Harry Kumel
Ronald Lambe
Richard Lambotte
Alberto Lattuada
Ernest Josef Lauscher
Boris Lehman
Claude Lelouche
Sergio Leone
Serge Leroy
Marco Leto
Marc Levie
Gunnel Lindblom
Niki LIst
Carlo Lizzani
Marceline Loridan
Nanni Loy
Magni Luigi
Rafaelle Maiello
Janusz Majewski
Luigi Malerba
Louis Malle
Cecilia Mangani
Pedro Maso
Francesco Maselli
Enrico Medioli
Fernando Mendez-Leite
Antonio Mercero
David Miliekovski
Pilar Miro
Nanni Moretti
Chantal Mittengere
Mario Monicelli
Giuliano Montaldo
Franco Mingozzi
Michel Mitrani
Claude Miller
Luc Moulet
Piero Nelli
Jean-Marie Nokin
Vincent Nordon
Franz Novotry
Jorge Ola Solum
Marcel Ophuls
Valentino Orsini
Gabriele Palmieri
Alan Parker
Basilio M. Patino
Peter Patzak
Rudolph Pauli

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Jean-Jacques Peche
Alexandre Petrovitch
Claude Pinoteau
Roman Polanski
Ventura Pons
Gillo Pontecorvo
Maurizio Ponzi
Henri Pousseur
Catherine Pozzo di Borgo
Maurice Rabinowicz
Jacques Raker
Renzo Renzi
AlainResnais
Antoni Ribas
Eric Rohmer
Raul Roland
Francesco Rosi
Joha Rosma
Susan Rossberg
Jean Rouch
Francisco Rovira-Beleta
Melle Ryslinge
Peter Samann
J.A. Salgot
Hugo Santiago
Claude Sautet
Furio Scarpelli
Jean Schmidt
Ettore Scola
Fees Sengers
Vicenzo Serami
Coline Serrau
Kaoul Servais
Fernando Solanas
Rodolfo Sonego
Andre Soupart
Steno
Jean-Luc Stercky
Henri Storck
Laslo Szabo
Boris Szuczinger
Jean-Charles Tachella
Alain Tanner
Ronald Tasse
Bertrand Tavernier
Paolo and Vittorio Taviani
Pascal Thomas
Hubert Toint
Lauri Torhonen

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Fernando Trueba
Jean-Marc Turine
Tonino Valeri
Florestano Vancini
Hugo der Vennetuan
Roland Verhavert
Chris Vermorcken
Piero di Vernadi
Guy Vial
Eriprando Visconti
Andrzej Wajda
Marc-Henri Wajnberg
Wim Wenders
Lina Wertmuller
Claude Zaccai
Cesare Zavattini
Thierry Zeno

JAPAN
Koji Chino
Kon Ichikawa
Shohei Imamura
Iroshi Inagaki
Keisuke Kinoshita
Masaki Kobayashi
Akira Kurosawa
Genji Nakamura
Yoshitaro Nimura
Nagisa Oshima
Yasughiro Yoshida

ALSO
Association of Danish Film Directors
Assocition Suisses des RTealisateurs de Films
Associacao Portugese de Realezadores de Films
Arbeites Gemeinschaft Neuer Deutscher Spielfilmprodizenten
Genootschap van der Nederlandse Speelfilmakers
Association of Irish Independent Filmmakers
Association of Polish Filmmakers
Association Magyar Films
Directors Guild of Japan
Federation Europienne des Realisateurs Audiovisuelle
Directors Guild of America

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APPENDIX C

Signers of the petition to the Eastman Kodak Company on preserving color films, June 12, 1980.

Hal Ashby
Michaelangelo Antonioni
John Alonzo
John G. Avildsen
Lindsay Anderson
Saul Bass
Robert Benton
Bernardo Bertolucci
Marco Bellochio
Peter Bogdonovich
Paul Bartel
Laslo Benedek
Stan Brakhage
Les Blank
Mirra Bank
Kevin Brownlow
Liane Brandon
Michael Cimino
Francis Ford Coppola
George Cukor
John Cassavetes
Gilbert Cates
Jonathan Demme
Caleb Deschanel
Brian DePalma
Emile de Antonio
Milos Forman
Peter Fonda
Federico Fellini
Sam Fuller
Jean-Luc Godard
Ulu Grosbard
John Houseman
Henry Hathaway
Walter Hill
Werner Herzog
Faith Hubley
John Hancock
Colin Higgins
James Ivory
Chuck Jones
Elia Kazan
Philip Kaufman
Jonathan Kaplan

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John Korty
Ted Kotcheff
Randal Kleiser
Irvin Kershner
Jeremy Kagan
Sergio Leone
Sidney Lumet
George Lucas
Mark L. Lester
Joseph Losey
Richard Lester
Terence Malick
vincente Minelli
Paul Mazursky
russ Meyer
Ronald Neame
Sembene Ousmane
Michael Powell
Otto Preminger
Alan Parker
Arthur Penn
Sydney Pollack
Leni Riefenstahl
Mark Rappaport
Michael Richie
Jacques Rivette
Reancesco Rosi
Alain Resnais
Tony Richardson
Herbert Ross
Arturo Ripstein
Karel Reisz
Martin Ritt
Steven Rash
Will Roberts
Amalie R. Rothschile
Martin Scorsese
Michael Snow
Steven Spielberg
Paul Schrader
Joseph Strick
Volker Schloendorff
Jans Jurgen Syberberg
Jerry Schatzberg
Deborah Shaffer
Vincent Sherman
John Schlesinger
Ridley Scott
Francois Truffaut

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James Toback
Jacques Tati
King Vidor
Willard Van Dyke
John Waters
Michael Winner
Wim Wenders
Lina Wertmuller
William Wyler
Bud Yorkin
Robert M. Young
Howard Zieff

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APPENDIX D

Text of the call to film directors and the film cultural community on the preservation of color films issued by Martin Scorsese in 1980; text of the final petition; and text of his speech at Gracie Mansion, New York City, 1987.

MARTIN SCORSESE

April 5, 1980

TO MY FRIENDS AND COLLEAGUES:

RE: OUR FILMS

EVERYTHING WE ARE DOING NOW MEANS NOTHING!

All of our agonizing labor and creative effort is for noting because our films are vanishing. I am not referring to the terrible problem of black and white film deterioration with which many of you are already familiar, but to something more immediate--FADING COLOR. After only a few years the color in our films will be irretrievably lost. The problem of color fading in film is beyond the crisis point. We must confront it now--it can no longer be ignored.

Your past support in voicing concern over this problem is greatly appreciated but it is no longer enough. Merely recognizing the fact that color film fades is useless. We must act now or the films we make in the 1980's will be subjected to the same indiscriminate destruction as all those made in the past forty years. Working with film stock that is guaranteed to deteriorate in a matter of months is insulting and insane. We have no choice but to take action to correct this situation which is absolutely intolerable.

Eastman Kodak will do nothing to remedy the situation simply because the immediate and outrageous financial profits have priority over the quality of product. So long as it is in their interests not to do so, Eastman Kodak, through their total monopoly in the United States and many other parts of the world, will be responsible for the destruction of our past and current

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work. They are betraying us and will have to account for the conscious perversion of the future history of cinema.

We must act to speed-up and expedite the solution to color stabilization and permanent color in film which can and must be achieved in this decade. The scientists and researchers working independently on this project do so with pitifully inadequate funds. This is the only obstacle to finding the technical solution to this problem. With our help, that obstacle can be removed.

If we come together, organize and operate form a position of strength, we will have the most potent means of attacking this problem. An organization of cinematographers, directors and other members of the film community can wield power collectively, generate publicity and raise money. Not only would we attract funds from private and government institutions but, in our positions within the industry we could enlist the support and resources of the film producers and film manufacturers themselves.

We, the members and supporters of this organization would contribute annually to help fund the research and development of color technology. We would insist on clauses in our contracts that require a 3-strip black and white negative be made as an insurance measure against unstable color stocks, and also have an answer print made from that negative to insure proper registration. But it should be mentioned that the 3-strip negatives are only a temporary preservative measure because, if not properly stored, one negative could shrink, rendering all three useless.

The most practical preservative and economic solution is developing a COLOR STABLE FILM. So, if you care about your work and its future, then, for its sake, please lend your name and support. Attached is a letter to Eastman Kodak, petitioning them to take immediate action to rectify the deplorable state of the color film they supply and print for us. As a first step, please join us in signing.

If you have any questions, ideas, thoughts or suggestions, please don't hesitate in responding, Martin Scorsese, c/o Chartoff Winkler Productions, 110 West 57th Street, New York, New York, 10019.

United we have the power to find the solution.

Best regards,

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Martin Scorsese (signed)

[text of the final petition to Eastman Kodak Company]

MARTIN SCORSESE

June 12, 1980

Mr. Walter Fallon, Chairman of the Board
Mr. Colby Chandler, President
Eastman Kodak Company
Rochester, New York 14650

Dear Sirs:

The problem of color fading in film has reached a crisis point, and can no longer be ignored. The instability of Eastman Kodak color stock is causing irreparable damage to our films and the films we have made in the past are deteriorating drastically or irretrievably lost. We must find the solution to this problem, not only to eliminate this threat to present films, but to salvage those made in the past that are not beyond help.

Since Eastman Kodak is the single largest manufacturer of color film in the world, and the chief source for motion picture film stock, your company must be held accountable for the color instability flaws inherent in the stock. While the cost of film has increased enormously over the years, nothing has been done, nor is being done, to solve the problem of color fading in film. This existing "flaw" is destroying our work.

We, the undersigned, are united in our determination to find and instigate the solution to the problem. We feel that it is in Eastman Kodak's interests not only to recognize the severity of this problem, but most importantly, to realize and accept that direct action must be taken now to expedite the solution which can and must be achieved in this decade. If the problem is not remedied, we intend to use alternative methods of production which are presently being explored and considered.

In view of the above, we believe that Eastman Kodak must

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recognize its responsibility to the people it services, and must assume a major role in the research and development of a stable color film stock. We ask and expect your full cooperation in this matter, and beseech you to act immediately. We will not tolerate token gestures. Please do not underestimate the collective power we have in areas of generating publicity, enlisting the support and assistance of motion picture producers and distributors, and if need be, finding alternative suppliers of raw film stock.

We care so much that we intend to use every means at our disposal to find the solution to the problem that threatens our work. We know that a solution exists and we feel it is long overdue. hence this petition. We are confident that Eastman Kodak will respond positively and supportively; it is as much in your interests to do so as it is in ours.

[followed by the list of signers]

EXCERPT FROM A SPEECH BY MR. MARTIN SCORSESE ON JUNE 24, 1987 AT GRACIE MANSION, NEW YORK CITY

I'd like to take this opportunity to say a few words about Eastman Kodak. For a long time filmmkers were concerned about designing films in color when the final results in our prints and negatives faded to pink in a relatively short period. Now this evening, I'm happy to say it's a different story. I'd like to point out and thank Eastman Kodak for taking the leadership position in the industry in making a major advance in the stability of motion picture negatives and prints.

In 1982, they developed Eastman color print 5384 at no price increase. Now all the other film manufacturing companies are following their lead. The old stock lasted 9 to 15 years before it would fade. The new stock lasts 88 to 100 years.

It's important to state this officially this evening because many filmmakers are unaware of it. In fact, yesterday when I told Brian De Palma--noted director of "The Untouchables" about it, he asked: "am I using it?" "Yes, Brian, you are using it."

Now we can design our films in color knowing that the total production design will endure. In addition, this new longer lasting sock allows film archives and museums greater freedom and flexibility to acquire and properly store films.....

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APPENDIX E

Directors Guild of America Special Projects, oral history project: volumes in print, archival volumes completed, volumes in progress.

Directors Guild oral histories in print

Eugene Lourie (Harcourt Brace Jovanovich)
Worthington Minor (Scarecrow Press)
Henry Koster (Scarecrow Press)
Curtis Bernhardt (Scarecrow Press)
Byron Haskin (Scarecrow Press)
King Vidor (Scarecrow Press)

Directors Guild oral histories at press

Ira Skutch (to press Fall 1988)
Sam, Jules, & Jack White (to press Spring 1989)
Norman Lloyd (to press Spring 1989)
Arthur Jacobson (to press Spring 1989)
Andrew Marton (to press Spring 1989)

Directors Guild oral histories in active preparation

Norman Corwin (editing complete)
George Sidney (in final preparation for press)
Stuart Heisler (in preparation for press)
David Butler (editing complete)
Wendell Franklin (editing in process)
Fletcher Markle (editing in process)
Marc Daniels (interviews and transcription in process)

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Directors Guild oral histories recorded:

Redgeway Callow
Henry Hathaway
Leroy Prinz
Sheldon Leonard
Jean Negulesco
Gordon Bennett
Leslie Selander
Clarence Brown
Yakima Canutt
Arthur Lubin
Robert Lewis Shayon
Arch Obler
Himan Brown
Shepard Traub
H. Bruce Humberstone
Henry King
Live Television Directors: Lamont Johnson, Buzz Kulik, Arthur Hiller, Livia Granito, Ralph Nelson, Arthur Penn, Daniel Petrie, Martin Ritt, George Schaefer, Franklin Schaffner, Paul Bogart, Alan Buckhuntz, Fielder Cook, John Frankenheimer, Walter Grauman

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APPENDIX P

Educational films on directors and directing produced with or by the Directors Guild of America. All titles are in circulation to colleges and universities through the Circulating Film Program of the Museum of Modern Art, New York.

Precious Images Directed by Chuck Workman. Academy Award, 1986

The Men Who Made the Movies Written and directed by Richard Schickel.
- **Frank Capra**
- **George Cukor**
- **Howard Hawks**
- **Alfred Hitchcock**
- **Vincente Minnelli**
- **King Vidor**
- **William Wellman**
- **Raoul Walsh**

Directors at Work Written and directed by Chuck Workman.
- **The Director and the Actor**
- **The Director and the Image**

50 Years of Action Directed by Douglas Stewart, Jr.

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AMERICAN MOVIE CLASSICS

August 23, 1988

OFFICE OF REGISTER OF COPYRIGHTS
AUG 24 1988
RECEIVED

Comment Letter
RM 88-3
No. 9

Mr. Eric Schwartz
Policy Planning Advisor
to the Register
Copyright Office
Library of Congress
Washington, DC 20559

Dear Mr. Schwartz:

As you requested of Carole Shander, we have enclosed a copy of Josh Sapan's testimony for the September 8 hearing at the Copyright Office. I have also included copies of letters from American Movie Classics subscribers regarding the issue of colorization. We would like to use this as written back-up — an addition to Mr. Sapan's testimony in the book you are preparing.

In his testimony, Mr. Sapan addresses viewer preferences and accessibility. As an exhibitor of classic films, he also discusses preservation and offers quite applicable analogies referencing other areas of preservation. Due to the limited amount of time, we did not have the opportunity to cover everything in your initial request.

Also, just to clarify a statement in your letter, American Movie Classics does not just offer black and white films — we also air color movies. (We have many early technicolor classics in our library.) But all are featured as they were originally produced. None are edited, interrupted, or colorized.

We look forward to this opportunity to share with your office our views on American film and the preservation of this vital art form. Please feel free to call Carole or me if you have any questions. We can be reached at 516-364-2222.

Very truly yours,

Myrna Baron

Myrna Baron
Director of Public Relations

Enclosures

150 Crossways Park West
Woodbury, New York 11797
(516) 364-2222

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AMERICAN MOVIE CLASSICS

AMERICAN MOVIE CLASSICS TESTIMONY

Joshua Sapan, President

Thank you for the opportunity to participate in these hearings.

I'm Joshua Sapan, president of American Movie Classics, a national cable television network that consists entirely of classic films from the 1930s through the 1970s. As a classic movie service, we provide nearly 13 million viewing subscribers with films in their original form — uncut, unedited, not "colorized" and commercial-free.

The issue, as we at American Movie Classics see it, is whether or not colorization technology denies access to an important part of America's cultural heritage.

We're here to discuss what happens with colorized movies. My real feeling is that if a decision moves along as it appears to be heading, in the future we will have done a disservice to our children.

We have been asked to comment on viewer preferences. I will gladly address this request of the Copyright Office, but we don't see this as the fundamental issue.

150 Crossways Park West
Woodbury, New York 11797
(516) 364-2222

We have, in fact, conducted research on the appeal of colorized movies, and we have found, in markets that are representative of middle America, that our subscribers, not surprisingly, prefer films in the original form — they are strongly opposed to colorization. The original black and white film does have great appeal. In Grand Rapids, Michigan; in Weymouth, Massachusetts; and in Rochester, New York the finding were the same. Among all sample groups, a majority, averaging 63 percent, said they preferred to watch a classic black and white film in its original version rather than a colorized version.

Last Spring, American Movie Classics participated in a press conference on colorization here in Washington with the Directors Guild of America and Hollywood legends James Stewart and Burt Lancaster. We videotaped the opinions expressed at the press conference and subsequently aired the piece on our channel. Nearly 2,000 movie fans from 43 states felt moved enough to take time to write to a cable service. Of all the letters received, only nine were from viewers not opposed to the process of colorization. For your perusal, we have submitted some of the letters received. It would be extremely difficult to find a sampling of the public more worthy of consulting than the movie fans who watch American Movie Classics.

Proponents of colorization claim to have research that supports increased viewership of colorized movies. We don't dispute their research, though our results differ. This proves only that there is interest in both areas.

However, interest and appeal are not necessarily what determines access. In large part, what determines and creates access is what is most easily and immediately marketable to the largest and, in some cases, newest audiences. The nature of the way people experience most things is that they go to the most immediate, popular material — whether it is good or bad, as long as it's fashionable. And the effort to colorize classic black and white films is just a way to appeal to the basest interest — the lowest common denominator.

You've heard [or you will hear] today from proponents of colorization who say that as long as the original version of the film still exists, the consumer can choose between the two. But as a movie exhibitor, I am here to tell you that this is a fallacy. The issue is not the existence of both versions of the films. It has nothing to do with allowing the black and white negative to exist in a vault somewhere. The real issue is about proximity and accessibility. The mere existence of art does not guarantee the experience of it. People will see the distorted version instead of the original. The real issues are accessibility, availability and preservation.

Research is not the primary reason to oppose the colorization of classic films. The primary reason is far more important, and much broader — it is the preservation of culture and access to those cultural artifacts. Such preservation in the long run also fosters the economic interests of free enterprise. And as a business exhibiting these films, we can help to prevent the disintegration of our cultural heritage.

I would like to present a number of analyses regarding the preservation of culture that I think will better explain our stance.

A question often grappled with by people, societies and government, is how to balance consumer demand and current economic interests with a need for the preservation of culture.

Take architecture as an example. Should all buildings be adapted or torn down if it suits the current economic climate? If land is exploitable by developers and usable by consumers, should we protect it or allow unrestricted tampering? What happens to a society that doesn't protect its cultural artifacts?

What happens is that cultural history disappears. That's why so many Americans travel to Europe for its cultural traditions. Europeans have done a much better job in protecting their architecture and history. With no thought of the future, and no sense of the past, we could ostensibly destroy all artifacts of our dynamic culture.

If one looked exclusively at consumer interest or demand and short-term economic interest in the field of architecture, we would have no historic preservation and very few buildings that were built before 1950 would remain standing. The reason is that in the primary real estate areas there are always opportunities for additional development and exploitation of property — there are always people willing to rent apartments or retail space. But our society has determined that it is to our benefit to protect certain buildings and preserve certain neighborhoods.

Architectural and historic preservation says that there is a reason to preserve architecture that is part of America's history. In fact, preservation of these areas has resulted in more vibrant economies. In areas which have received landmark designation — such as in nearby Georgetown, Philadelphia's Society Hill, and New York's Greenwich Village — tampering or development is either completely restricted or constrained by very specific guidelines. The effect has been to maintain some of the most vibrant tourist economies in America. Nevertheless, there will always be those developers, insensitive to history, who would tear down to rebuild, and consumers who would move in. But the preservation has been good for business — and sensitive to our cultural heritage.

Another, and perhaps more closely related analogy, has to do with great American literature.

We have wonderful novels — "Moby Dick", "For Whom the Bell Tolls", "Of Mice and Men" — and we have condensed notes — a published, very brief, perhaps 20-page synopsis of each book. Given the option, a child's inclination would be not to read the literature, but to merely skim the condensed notes. But exposure to the literature is a primary and important part of our educational process. To deny children this access — to lock the book away and keep only the condensed notes accessible — is a cultural deprivation. At best, to put the book and the notes side by side in a bookstore, most would still choose to read only the notes. But, just as with film, to limit access of the original would be the real deprivation. And this is the direction in which we are headed. The mere existence of the original is not enough, because when the tampered version exists, access to the original will become limited.

If you believe that American literature is important — it is not enough to have those books available in just three esoteric bookstores in America, because if only the condensed notes are readily available to the children of America, we have not made that preservation and availability of the original meaningful. And we, as a society, will pay the price for it. The same can be said for motion pictures.

If you relegate something to the closet, if you don't put it on the shelf, and if you don't get wide distribution, then its true — you have essentially shut off the access of that to consumers. It is not enough to simply allow something to exist in America. You have to support it within a system that in reality provides opportunity for exposure. It is a fallacy to say "if it's there, it's there." The truth is that "there" doesn't end with existence. "There" ends with a real determination of access, availability, and distribution.

The limited distribution of black and white films has not yet had an effect on American Movie Classics. Our library consists of movies already licensed from many studios. The contractual agreements specify which films we can air; when we can air them; how we can promote them; and the quality standards we require. Our current contracts have not been effected; though we have been asked during negotiations if we will take the colorized films. No, we will not. But colorization is now clearly an issue for the studios that own the films. The process of colorization is very expensive. Once a film is colorized, the company needs to recoup that expense.

If we allow greed to dictate, then the all-important access will be threatened. Just look at the precedent. We think that what will happen, is that they — the colorizers — will simply push the colorized version as they've already been doing, and it will be harder and harder to get to the black and white version. They've spent a lot of money — first colorizing, then marketing, publicizing, and packaging, and promoting the colorized film. No wonder they find viewers for this material. It's the colorized version that sits in Point of Purchase displays at video retail and rental outlets — so what happens to the black and white? What precedent has shown, is that they'll take the version with the greatest, and easiest, marketability — they'll push one and not the other. That's what will determine access.

What's next? If we adulterate this material to increase its popularity, and take the creative decisions out of the hands of the original makers and put them in the hands of the business people, then exactly how far will businesses go and what are the implications? What if we change the soundtrack? It's very arguable to say that we're creating the samemood, but contemporary music makes it more appealing to the audience. So, if you use the argument of the pro-colorized people that it will expand the audience, well, then you would make other alterations. It is the logical next step in the exploitation of material by business people to supposedly increase the marketability of art. But, it destroys the very essence of it, and it is not acceptable to say that the existence of a black and white movie somewhere makes this tolerable and acceptable.

Our concern is not for today — American Movie Classics now has many films under license. But our concern is for five years from now. When the colorization technology is improved — when the color-washed picture doesn't look quite so bad — and when the colorizers continue to push their "new and improved" version. The danger, and it is a real danger, is that our access to the original will be cut off.

What happens when we get to a time when only colorized versions of this original are available? Only those with the longest memories will ever recall that there was an original black and white version. And generations of viewers will be deprived of the original piece of art. And they'll know that we didn't care enough to preserve our heritage.

Thank you.

2008 Cliffside Dr
Ft Worth, Tx
76134

Dear AMC:

Ever since I first heard of colorization of movies, I have been firmly opposed to it. To me, as someone has said, it would be comparable with painting over the Mona Lisa! It should be illegal to desecrate works of art, which is what colorization is to the wonderful old movies I love so much!

I love American Movie Classics channel - (also the host) - keep up the good work.

Sincerely,

Mrs Burton Clifton



Jennifer Stuck
Derby, KS

American Movie Classics
Box 999
Woodbury, NY 11797

May 10, 1988

Dear AMC:

This letter is in response to the special you had from Washington about the colorization of black and white movies. I am nineteen years old and have been an avid fan of the classic black and white movies since I was twelve. I was born in 1968 and missed, what seems to me, a wonderful and golden era in movies. That is why I've always been so grateful to AMC for bringing the classics to me on my television screen, with no commercials and in their origional state! Thank you.

Recently I completed a paper about the colorization of black and white movies. In my research I found that the main reason colorization is being used is because the younger generation will not watch black and white. I did not believe that for an instant so I took my own survey at a local high school. I surveyed fifty-one students whose ages ranged from sixteen to eighteen. When I asked them if they would watch a black and white movie, with no color added, forty-seven said that they would. Only four said that they would not. Through other questions I learned that the younger generation looks for the content of a movie; not the color. As a matter of fact many students avoid watching the colored movies because it looks fake and it ruins the origionality. I know that fifty-one students out of the thousands in our nation isn't a lot, but I honestly believe that there are many other younger people who feel the same about colorization. Isn't there anything we can do, some place to write opposing the use of colorization? I feel strongly about this and want to do <u>something</u>!

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JERRY A. KING
619 Robin
Bluefield, Virginia 24605
(703) 322-4133

May 10, 1988

American Movie Classics
Post Office Box 999
Woodbury, New York 11797

Gentlemen:

I write in response to your inquiry concerning viewer's opinions of "colorization" and other alterations to black and white motion pictures. Please forgive the length of my opinion.

For fifteen years and up to the week my father died, we collected vintage radio disks and tapes: programs, newscasts, and commercials. The collection of these materials became my dad's avocation in retirement and helped us become more strongly bonded in adulthood than we had ever been when I was a child. Since his death, I have moved my family from Denver to the small town of Bluefield.

Soon after arriving, I was approached by a local radio station's talk show host to discuss the 21,000 pieces my father and I put together. I later agreed, about a year ago, to do a radio show featuring my shows with the provisions that: 1) the shows air intact and with commercials unedited, including tobacco ads, 2) the programs may not be interrupted for any purpose other than news bulletins, and 3) I provide background information for the shows and have sole right to decide what programs air. Needless to say, I don't make a penny from the show and only hope to pick up a few fans of radio from its "Golden Era."

And, needless to say, I'm a fan of AMC and have tried to model my introductions to the shows after the crisp, but friendly style of Bob Dorian. [By the way, I hope I spelled "Dorian" right--put it on the screen more often.]

I've mentioned the "colorization" of motion pictures a number of times on my radio program and played the radio version of Stewart's "Jackpot" as the lead-in to the discussion. I asked callers to give me their views of the issue and, over a two month period, the audience has split about 65% to 35% against Ted Turner's exploitation of "his" movies. I'm now asking listeners to write their representatives in Washington. I realize that people who like vintage radio are also inclined to like motion pictures from the same era uncut and in the same color mode as the original...

Often, I list the AMC movies for the coming week and give tips as to which were done on "Screen Guild" or "Lux" in radio form--sometimes, I play the radio version before or after AMC cables the motion picture. It's almost a sacred trust, Gentlemen: the preservation of an art form. Your channel gets four stars in this house; my dad would have liked it, too.

William D. Crane
P.O.Box 111
Blackwood, N.J.08012

American Movie Classics
Box 999
Woodbury , N.Y. 11797

GENTLEMEN ;

As a retired member of I.A.T.S.E. & M.P.M.O.U. Projectionists local # 418. I wish to thank you for airing some of the film classics of yesteryear and to voice my opinion concerning the coloring by electronics

To place color in a black & white film is like saying that the late Al Jolson never worked in blackface, that the movies talked in dolby sound from day one., that color was always in the movies.

Have not the high tech people do enough to ruin the art of film making and showing. Now they would like to change histroy.

After 42 years in the booth, the last five of them running a semi automated twin I am my co worker was glad to leave the business after our theatre closed. We were fed up with a baby sitters job where we as craftsmen had no control over the showmanship of the product.

When I started in the business the movies were made and shown by showmen. People who took pride in what they done. From Hollywood right down to your local theatre, everyone connected with the film was proud to make people laugh and cry with their screen product.

Today for the most part I can't understand why people would want their names on the credits. The product is for the most part is nothing but pure defecation. The people who make today film product couldn't even hope to touch the hem of a actoress'd dress or shine an actors shoes.

The technicians with all their electronics can't match the special effects in a black & whit flick called "King Kong " let alone do some of the fine work in GONE WITH THE WIND.

I sometimes get a tear in my eyes when I watch some your classics as I know the people who made them for the most part have become part of the passing parade, they live on, through their work. Now some high tech ass hole with a computer wants to distroy it...I SAY NO WAY..... NO WAY.....

In a month we are moving to another town which I am sorry to say does not carry AMC as yet, I hope they will soon. In the meantime keep up the excellent work .

And now like that old projectionist of so long ago I will close the dowser, pull off the arc light and fade out.....

William D Crane

American Movie Classics
P.O. Box 977
Woodbury, NY 11797

Dear Sir:

I am writing in regard to your statement on the question of movie colorization. I fully support efforts to prevent the destruction, distortion, alteration, colorization, etc of movies. As a graduate student pursuing a degree in Russian history, I realize the great significance of classic works such as Tolstoi's War and Peace and I would be appalled if publishing houses altered and distorted them the way colorization has altered and distorted films like "It's a Wonderful Life" and "The Maltese Falcon." Classic films, indeed all films, form a part of the historical legacy of our society as much as do other art forms such as the novel and painting. The best thing we as a society can do is to preserve films in their original form so they can be enjoyed now and in the future.

Sincerely,

Kathleen A. Kelble
30 Georgetown Kennedy Drive
South Burlington, VT 05403

BEST COPY AVAILABLE

5-4-88

Your Movies are great -
especially those from the
early thirties. Wonderful prints,
wonderful introductions.

As for colorization - NEVER
It ruins the artistic Endeavors
of those who labored for money
and love. Continued success.

Harold Madden
408 Sonya Dr
Waukesha WI 53188



Buena Vista Dr.
Cody, Wyo. 82414

Cody WY

5-1-88

American Movie Classics,

We both very much enjoy watching AMC TV and agree that the Classics should not be ruined by colorization!

Jim & Nancy Willert
Cody Wyoming

May 11, 1988

Bob Sorian
American Movie Classics
Box 999
Woodbury, N.Y. 11797

Dear Mr. Sorian,

I believe that colorization alters the quality of a movie. Please exercise your considerable influence to keep this bastardization out of the films you present.

I enjoy your show almost daily.

Thank you,
Marcella

Mary Keller
Harper Woods, MI

Dana S. Markham
1015 Eisenhower Cir. #1
Junction City, KS. 66441
(913) 762-2350

2 May 1988

American Movie Classics
Box 999
Woodbury, N.Y. 11797

Dear Sirs:

I am writing in response to a show aired Friday, 29 April 198 about the subject of colorization of originally black and white films, re-editing, and cutting of films for television. I am very excited and happy that various Directors, Actors, and others directly involved in the film industry are <u>against</u> such <u>damage</u> to these beautiful films, as I am. I heard about colorization of black and white films as a film student last year at North Texas State University, and was, to be honest, curious. I saw one such film, "It's A Wonderful Life", and was shocked. One of the best, high-quality films ever made was ruined into looking cheap and amateurish in comparison. The addition of "computerized color" leaves a pasty, artificial look to the film, taking all of the charm and wonder out of the story. (People look like painted clones!) Besides this problem, Colorization also harms the film, (as stated in your report/story) in that black and white filmmaking is approched very differently than color filmmaking (as with the lighting, for example).

As a student very new to this ~~fil~~ field, I have much to learn about the film industry. One thing I

2011-22nd Street
Rockford, Illinois 61108
May 9, 1988

American Movie Classics
P. O. Box 999
Woodbury, New York

Dear Mr. Dorian,

I watch AMC nearly every day. I just love the old movies and I would rather watch a good, old classic for the umpteenth time than watch something that I've never seen before on regular TV. There is no art, no talent, no meaning to most current TV programming. I have a young child in the house and don't care for him to be exposed to the commercials, sex, violence and immorality of contemporary TV programming.

I just saw the piece AMC did on colorization. I applaud AMC for showing movies just as they were made! If I happen to watch anotherchannel to see some wonderful, old classic and it turns out that it has been colorized, I either turn down the color on my TV or I watch it on my black and white set. I just can't stand to see those great actors of the past with pink faces and green lips. I have not seen even one colorized movie that has been well done. I am very opposed to the colorization process and would like to see some sort of law passed making it a criminal offense!

Now, if you could answer just one little question for me. Who won the best actor Oscar the year Cary Grant was nominated for Penny Serenade? That is one of my all time favorites. That scene where Mr. Grant pleads with the judge jerks tears every time I see it even though I know it's going to turn out right. I just can't believe that Mr. Grant didn't win.

Thanks for AMC and all the people who make it possible!

Sincerely
Linda McConoughey
Linda McConoughey

Linnie Saurey
724 18th Street
Rupert, ID 83350

American Movie Classics
P.O. Box 999
Woodbury, NY 11797

May 12, 1988

Dear American Movie Classics,

I recently caught your clip from the film archives featuring James Stewart and others on the subject of colorizing and editing and etc. original versions of their films. I felt very strongly in agreement with them, and I am furious with people who will deface them.

I was born in 1960, long after many of these wonderful movies were made. Yet I feel the joy and thrill of the fine, true art that made them great in the first place. Black and white may seem outdated by many of my generation because they don't know any better. The Grapes of Wrath for example. It was such a depressing life featured in that movie. Colorizing such genius would destroy it. A movie like The Wizard of Oz where the black and white carried a feeling, and the color added where it was fitting.

I have seen some of the Hitchcock films colorized. I will not support the video market that does this. It was a big dissapointment. If it says, "New colorized version" on it I will not have it in my home.

I enjoy AMC immensly. Bob Dorian's comments are always interesting and informative. It is refreshing to appreciate the style of the movies in regard to the old morality. Movie makers today have no imagination. They all take us inside the bedroom and "show all". It is much more moving to watch Camile and know what she was without seeing what she was and feel love for her and the man who loved her.

Thank you for the great movies you send. Uncut, uncolorized. Keep them coming!

Your AMC admirer,

Linnie Saurey

Linnie Saurey

P.S. I would like to see Notorious again. Can you get a hold of Dead Men Don't Wear Plaid?

May 10, 1988

Dear Sirs,

I have rarely felt so compelled to express my opinion, in writing, as I did upon viewing your segment regarding the colorization of black and white films. I do feel very strongly that current owners of films should have their rights (to distibute and profit from the films they own) protected; however, I am positively repulsed, and enraged, by the colorization of films.

The best argument that proponents of colorization can advance for this abominable practice is that it attracts young viewers who would otherwise ignore the "outdated" looking black and white films. I do not feel that this is a valid argument, or that it should even be a consideration when dealing with "old" movies. Colorizing classic films in an attempt to attract new viewers is akin to repainting the "Mona Lisa" with modern clothes (after all - it's the smile that counts).

I was raised on movies like "The Philadelphia Story", "Mr. Hobbs Takes a Vacation", Love in The Afternoon" and countless others, before colorization was even a green coated gleam in anyone's eye. I don't think I am particularly unique in my preference for classic films; I have many friends who are also happily addicted to the American Movie Classics channel. I have seen the colorized version of "Miracle on Thirty Fourth Street". The memory of this nightmare has driven me to obsessive taping of my favorite movies for fear that they will effectively disappear into the "Colorized Zone". Considering that I am only twenty three, I am also concerned that my tapes will disintegrate long before I grow tired of watching them.

I fully support any efforts to stop (with luck, retroactively) colorization, as well as the other questionable practice of re-editing (read: butchering) of films to better fit restricted time slots. I hope AMC will provide viewers with more specific information on how to combat colorization. of course, the most effective way to do this is to communicate to the proponents of colorization through their bank accounts. Hopefully, this terrible practice will prove unprofitable and be abandoned.

To end on a more positive note, I would like to thank those responsible for establishing the AMC network. The set-ups for the movies are always interesting and often provide the viewer with a new perspective from which to view films they've already seen. Bob Dorian is a great host, relaxed but engaging when describing a film. I look forward to many more hours of great entertainment provided by AMC. Thank you !

Sincerely,

Katharine Duryea
Buffalo, NY

Kate Kerr

P.O. BOX 178
PORTSMOUTH. OHIO 45662

APRIL 29, 1988

AMERICAN MOVIE CLASSICS
P.O. BOX 999
WOODBURY, NEW YORK 11797

DEAR PEOPLE,

I AM WRITING THIS LETTER IN SUPPORT OF CLASSIC FILMS; IT IS INCREDIBLE THAT WE EVEN HAVE TO JUSTIFY THE PRESERVATION OF ARTWORK.

SURELY MANY PEOPLE HAVE ALREADY ENUMERATED THE REASONS AND VIRTUES OF PROTECTING FILMS IN THEIR ORIGINAL FORM; HOW ELSE CAN FUTURE GENERATIONS EXPERIENCE THE WORKS AS THEY WERE CREATED AND CRAFTED? TO CHANGE ANY ASPECT, WHETHER THROUGH MISGUIDED "RE-COLORING" OR THROUGH ANY DEGREE OF EDITING/EXPURGATING, ETC., IS TO TOTALLY AFFECT AND ALTER THE ORIGINAL IMPACT AND CHARACTER OF THE PIECE.

I SUPPORT LEGISLATION WHICH WOULD TRY TO GUARANTEE AND PROTECT ORIGINAL ARTWORKS AND FORMS OF CREATIVE EXPRESSION IN THEIR ORIGINALLY-PUBLISHED STATE. THIS CAN ONLY SERVE THE INTERESTS OF CREATIVITY, INTEGRITY, AND ART HISTORY; INDEED, OF OUR CONTEMPORARY CULTURE.

I WISH YOU WELL IN YOUR EFFORTS.

SINCERELY,

Kate Kerr

William C. Micawber
1221 Washington, 310
Denver, CO 80203

May 10, 1988

American Movie Classics
P.O. Box 999
Woodbury, NY 11797

Re: Colorization

Thank you for airing the National Press Club conference on colorization. By giving time to this issue, you have done a favor to all film lovers. As for your policy of presenting films "...uncut, uninterrupted and, certainly, uncolorized..." by all means, continue, with applause.

As many others (I suppose), I thought that colorization of a broadcast movie could be eliminated simply by turning down the color intensity of one's television; further, I assumed that uncolorized versions of films would always be available. Learning that the first is not so (in the sense of recovering the original grey scale) and the second, not necessarily, changed my attitude toward colorization from passive dislike to active hostility.

Education will strongly affect public opinion; whatever time AMC wishes to spend on it will be well spent. Luckily, many guiding misconceptions, such as mine, can be easily corrected. Getting the information out quickly, before people have made emotional commitments to misinformed opinions, would magnify its effect.

The desire for colorization is aroused by an assumption that black and white must be inferior; which requires a failure to recognize that the cinematographer and the director are both artists, with the skill, the desire, and the insight to turn what the rest of us might casually suppose a liability into an asset. When we watch a classic film, we often are not conscious of how light, shadow and the absence of color are used to strengthen its impact; that may be well if, as Mark Twain once suggested, too much analysis harms appreciation. But now, we must become aware, in order to appreciate that colorization will debase, not enhance, the films we love. Supposing that The Maltese Falcon can be improved by colorization is like supposing that Michelangelo's Pieta could be improved by spray paint.

Once more, thank you for your attention to this issue.

Sincerely,

William C Micawber

William C. Micawber

Office Memo

American Movie Classics

Sentry Insurance

From Jeff Furst

Subject "colorization"

Date 5-11-88 Acct./Pol. No.

Copies to

My views on colorization:

It's desecration.

Would anyone presume to "update" a Rembrandt painting by adding flouresent paint touches to it, simply because they weren't available in Rembrandt's time? If so, the art world would be enraged. Well, I'm enraged at the colorization of black & white movies.

Please help me make my voice heard, by passing this on to the people who are trying to stop colorization.

Thank you for being there and for bringing me wonderful old movies I've never seen before.

P.S., I'm a 40-year-old, married, father of three children, in case statistics are of interest.

Jeff Furst

205 Dunning St.
Madison WI 53706

62-18

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May 17, 1988

Mr. Bob Dorian
American Movie Classics
P.O. Box 999
Woodbury, New York

Dawn Wilson
Renton, WA

Dear Mr. Dorian,

I am a big fan of the AMC channel and was pleased to see last week, a segment denouncing the companies who colorize films. I was appalled from the beginning with the mere idea of defacing such great films as "It's a Wonderful Life" and "The Maltese Falcon."

I strongly agree that those films were meant to be seen in black and white, and for good reason (can you imagine "Citizen Kane" in color? It would be blasphemous to do such a thing) Even if the color could be produced with great authenticity, which positively cannot be done, it would still be an outrage.

It does a great injustice to the people who made those films, and also to those who watch them. I am insulted that television morguls think so little of my intelligence to assume that I cannot enjoy a film because it is not in color. It's nothing short of vandalism and something quite close to painting clothes on Michelangelo's David.

Keep us informed of anything happening in this area (good or bad) and who we can write to in order to express opinions regarding this issue.

Now that I've got that off my chest, I would like to give you my (rather odd) list of movies I'd love to see on the AMC channel. I don't know the procedure or range of difficulty in procuring films, and I realize you must receive thousands of requests every day. However, I'm sending you this list because I've never seen any of these movies but I have read about them and have wanted to see them for a long time.

American Movie Classics
P.O. Box 999
Woodbury, NY 11797

May 17, 1988

Dear Sensitive Listeners:

I am writing this letter in response to the recently aired program on colorization of black and white films. In my opinion, colorization of classic old films, (or any old films for that matter), is a reflection of the lack luster and lack imagination of the 1980's. Unfortunately, the people who elect to alter the wonderful films of the past (for whatever reason--be it money or public pressure), simply add to the melting pot of mediocrity and greed!

I represent a group of old movie buffs, and wish to express the thought for us collectively. We in no way will ever support any facilities that feature movies that have been colorized. This includes movie theatres as well as television stations.

American Movie Classics continues to show wonderful old movies exactly as they were intended to be shown by their creators. Indeed old black and white movies are an art form! Certainly if the creators of SOME LIKE IT HOT wanted their film done in colour, they would have filmed it that way originally.

WE SALUTE YOU AT AMERICAN MOVIE CLASSICS! WE INTEND TO BE FAITHFUL FOLLOWERS FOR MANY YEARS TO COME!

Sincerely,

Sherida Lembke

Brisbane, CA

Ronald Henning
943 Canterbury Drive
Crystal Lake, IL 60014
May 2, 1988

To you lovers of film at AMC,

Let me add my voice, though not alone yet I fear it's crying in a wilderness brought on by the "vast wasteland," to those of you fighting to maintain the artistic integrity of movies created in black and white. I, like most Americans, have come to depend on TV as a source for films. Whether I am watching a network broadcast, a cable narrowcast or a videotape from the local rental shop I am very much aware of and annoyed by what has been done to the original to make it possible for TV viewing. Besides the commercial interruptions and the "editing for television" which provides the time for those interruptions on the networks, there is the scanning to fit widescreen format films on the narrower TV screens and, of course, the fundamental problem of image size. (Spectacular epic films can't help but look puny on even large screen TV's.)

These annoyances, however, might be seen as "necessities" of transmitting movies to TV. Back when films were first brought to TV, a similar "necessity" was that even color films would be shown in black and white because that's all there was. Now, however, we have an invention which no "necessity" mothered. Now we have entrepeneurs who have so little respect for the creativity of the artists and the intelligence and sensitivity of the audiences that they have concocted (because they can't be said to have "created" anything) a synthetic product which exploits and despoils some of the greatest of classic films.

It is baffling to me that there is no law to prevent the vandalism of art works, even those which may be seen to belong to the "public domain." Certainly the child who would try to use his crayons to "improve" Picasso's drawings would be stopped by either the museum guards and the law or at least by his mother. Unfortunately, those who would "colorize" (a word like "Martinize" or "Simonize" which hints at its commercial possibilities) Capra's <u>It's a Wonderful Life</u> don't appear to have any mother besides their drive for the dollar.

Please list my name with those of you who would stop these naughty children. Perhaps they need the lesson Alfred Hitchcock learned as a child. If they were sent to jail, we could say "This is what we do to naughty boys."

Sincerely yours,

Ronald W Henning

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Louisville, Co

To: Who it may concern
From: Stacey Marie Dondelinger, Age 19
Date: April 30, 1988
Re: The Colorization of Films

Dear Sirs,

Hello, as mentioned above my name is Stacey Marie Dondelinger and I am 19 years old. I am a senior at Centaurus High School, located in Lafayette, Colorado. (I mentioned all of the above for a computer - a typewriter is unavailable at this moment.)

On the night of April 29, 1988 I watched one of your terrific musical films (starting somewhere in the middle) and your brief "interruption" on "Colorization". I definitely agree with the statements that were made, original movies should be shown in their original, unedited state because otherwise it ruins the character, romance, emotional quality and the classic value of the movie. The original way is definitely more touching and pleasing to watch. I love (excuse me) "old" Black & White movies, just like I love (excuse me, again) the "Oldies" music. I love them both, for "back-

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May 4. 1988

American Movie Classics
150 Crosswaws Park West
Woodbury. NY 11797

Dear Bob Dorian.

I would like to commend your cable service for showing uncut and un-colorized versions of movies. Is it still possible to show those movies that have been colorized in their original black and white form? I have been afraid that they have been lost forever. The movie that comes to mind first is DARK VICTORY, with Bette Davis. A group of friends and I sat down to watch it a few weeks ago, unprepared by the station that it had been colorized. We made it about half way through the movie but the colorizing was so distracting. The intense feelings in the movie were so diminished by the poor color job. We decided to turn it off rather than belittle such a great movie. And to think some young people might never know the beauty and power of these original B/W movies! My friends and I will never again try to watch another colorized version of a movie, just like we always check to make sure a station is allowing enough time to present an uncut version of a movie. Of course with your cable station we don't have to worry about anything - just sit back and enjoy! Thank you!

Sincerely,

Peggy Peterson

Peggy Peterson

Okemos, MI

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Patricia Holloran
P.O. Box 22555
Santa Barbara, Calif. 93130
April 29, 1988

Dear American Movie Classics Production Team,

In response to Bob Dorian's request that the audience write in about colorization of old black and white films, I'd like to add my opinion to the pack. Although I can sympathize with the notion that modern T.V. watchers are accustomed to having a lot of stimulation, so may not watch movies that are not in color, ~~[illegible]~~ that is their loss by choice. The decision to color a film against the wishes of the producers + directors (or even the ~~[illegible]~~ knowledge of what their wishes would have been had they lived into the late 1980's) is defacement of a work of Art. I'm a Ph.D candidate in Art History and am acutely aware of what would happen if I were to

May 11, 1988

American Movie Classics
Woodbury, NY 11797

Dear Sirs:

This is in response to your request for comments on colorization, cut films + endless commercials.

We enjoyed your program recently with Jimmy Stewart, Burt Lancaster + directors with their comments.

My husband + I, who are in our middle 60's, actually enjoy seeing the old movies in color + really don't see what all the fuss is about. Granted maybe a few colors are not true but on the whole we think they've done a wonderful job.

Since we are not true "artists" but just the average movie fan of old, good movies, maybe we're missing something others see. Now when it comes to commercials every 5 minutes + large chunks of movies missing, we don't care for that. We know the sponsors pay for these films + certainly have the right to tell us about their products but they can do so + still keep the movie

(over)

in such a way that we can follow story. They've lost us many times & constant interruptions.

We do enjoy your movies & think Bob Dorian is doing a fine job. I like to hear the "extras" he tells us about & especially enjoy hearing about character actors who really make a film.

Since your program doesn't have commercials, colorization, etc., we see no problem with the way you are doing things now.

But if another station has a good, old movie in color that used to be black & white, we will probably watch it. I'll never forget how thrilling it was to see "Yankee Doodle Dandy" in color after seeing it in b & w in 1942. Those flags were beautiful!!

The good Lord made all these lovely colors for us to enjoy. I don't see a black & white world out there so if a movie is colored, that's fine with us. Frankly, I don't see why anyone would want to bother Congress with this issue when they should be acting on real decisions.

Sincerely,

Harry & Mary Carpenter
4125 S.E. 149th Lane
Ocala, FL 32671

440

Dear Sirs:

I have seen *It's A Wonderful Life* in the colorized version twice, as well as in the original black and white many times. It is a bit prettier in color, but the story is equally effective in either case.

When an editor rephrases a sentence in one of my books I hate it, but the book is little changed by it. Colorizing a movie changes it, but not the most important parts of it.

Sincerely, [signature]

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do enjoy your

Bob Dorian is doing a fine job.
I do hear the "extras" he tells us about
& especially enjoy hearing about character actors who really make a film.

Since your program doesn't have commercials, colorization, etc., we see no problem with the way you are doing things now.

But if another station has a good, old movie in color that used to be black & white, we will probably watch it. I'll never forget how thrilling it was to see "Yankee Doodle Dandy" in color after seeing it in b & w in 1942. Those flags were beautiful!!

The good Lord made all these lovely colors for us to enjoy. I don't see a black & white world out there so if a movie is colored, that's fine with us. Frankly, I don't see why anyone would want to bother Congress with this issue when they should be acting on real decisions.

Sincerely,
Harry & Mary Carpenter
4125 S.E. 44th Lane
Ocala, FL 32671

(American Movie Classics
P.O. Box 999
Tuxedo Park, NY 11976



441

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EROL'S INC.
EXECUTIVE OFFICES
6621 ELECTRONIC DRIVE
SPRINGFIELD, VA 22151
(703) 642-3300

VIDEO CLUB & COLOR TV
SINCE 1963

Comment Letter
RM
8 X - 3
No. 10

OFFICE OF REGISTER
OF COPYRIGHT
AUG 2 4 1988
RECEIVED

August 22, 1988

Ralph Oman
Registrar of Copyrights
Library of Congress
Department 100
Washington, D.C. 20540

OFFICE OF REGISTER OF COPYRIGHTS
AUG 24 1988
RECEIVED

Dear Mr. Oman:

As part of your fact-finding and research into the colorization of motion pictures on video cassette, I am writing in response to the questions you posed in your letter of July 1, 1988.

* The following motion pictures are now available in colorized versions on video cassette. The date that corresponds with each title indicates the date the title was released to retailers.

TITLE	RELEASE DATE
Way Out West	9/85
Topper	8/85
Topper Returns	2/87
It's A Wonderful Life	10/85
Night The Living Dead	9/86
The Bells Of St. Mary's	1/88
D.O.A. (1949)	12/86
Sherlock Holmes And The Secret Weapon	1/87
Yankee Doodle Dandy	7/86
Captain Blood	3/87
Little Shop of Horrors (1959)	1/87
Adam's Rib	7/88
Father Of The Bride	7/88
The Maltese Falcon	12/86
Something To Sing About	6/87
A Christmas Carol (1938)	10/88
Casablanca	10/88
Suddenly	9/86

We expect more colorized versions to be released from the Turner MGM library in the future.

* In terms of the process used to colorize, I have attached a article from the New York Times regarding the process used on "Yankee Doodle Dandee". We have not queried our customers to a specific process preference.

* NOT WITH [illegible]

BEST COPY AVAILABLE

* All films that have been colorized are also available in black and white. It's important to note that all colorized versions can be viewed in black and white by simply tuning out the color on the television set. All colorized movies have been previously released in black and white. Some titles available in black and white prior to colorization, such as "It's a Wonderful Life" and "Night Of The Living Dead", have been rereleased and advertised again in black and white along with the colorized versions. "Father Of The Bride", for example, was released in both versions at the same time. All advertising associated with colorized films usually states "now available in colorized and original black and white."

* Based on the data we have reviewed from a couple of titles that have been available both in black and white and in color, more customers have rented black and white copies rather than the colorized versions. The black and white versions of most titles now available in color have been available in black and white for sometime. Data as well as feedback from some store managers illustrates that clearly customers embrace the choice of black and white or color. We are not aware of any complaints from customers since we have also carried some titles in color.

It is important to reiterate that an individual that rents a colorized version can watch the film in black and white simply by removing the color by manipulating the color control on the television set.

* There is not enough history of colorized vs. black and white video cassette sales to measure frequency. Tapes sales frequency is more a function of price than whether the title is in black and white or color. Again, the colorized version can be easily viewed in black and white. The customer simply has a choice if the colorized version is purchased. We only have one title that we can report any sales frequency comparison where the prices were similar. "It's a Wonderful Life" sold more copies in color (2,113) than in black and white (648) during 1987. The title was priced at $9.95 for color and $7.95 for black and white.

* Suggested retail prices have varied as much as $30.00 higher for colorized versions compared to black and white copies.

* The artwork on the video cassette box promotes when a film has been colorized on video tape. EROL'S does not add additional labeling because the original artwork is

prominent. Colorized movies also include a colorization tag which appears before the opening credits. We rarely receive questions from customers about whether the original version is better than the colorized version. Our store employees generally acknowledge there is a choice but are not instructed to indicate which is "better". We don't believe additional labeling is required to indicate the difference between versions. The artwork is generally prominent because the distributor is doing everything possible to promote the title in its new colorized form.

* Occasionally, video retailers have a choice between Motion Picture Association of America rated, and unrated editions of particular motion pictures from various movie suppliers. At EROL'S, we only carry one version for rent, but both would be made available for sale. For example, the recent release of "The Sicilian", rated R by the MPAA, was released to home video retailers in both the original R version and a not rated version which contained additional footage not shown theatrically. In this case, we decided to carry the unrated rated version because our movie buying staff decided the additional footage enhanced the film. Regarding foreign films, retailers often have a choice between subtitled and dubbed. From all indications at the store level, it appears foreign film buffs prefer subtitles.

In conclusion, we feel that particular attention should be paid to the end use of a colorized version of a motion picture on a video cassette. As previously indicated, a colorized version of a film can also be viewed in black and white by the viewer by turning off the color on the television set. In addition, a colorized version of a motion picture begins as a new black and white print of the film transferred to video cassette. Therefore, the film longevity is enhanced by the restoration process.

We look forward to participating in the hearing on this matter scheduled for September 8. If you have any questions in the meantime, please don't hesitate to call.

Sincerely,

Vans Stevenson
Director of Public Relations

cc: Eric Schwartz, U.S. Copyright Office
Ron Castell, Vice President, EROL'S Inc.
Burton Wides, Counsel, Video Software Dealers Assoc.

advroc.vs

The Register of Copyrights
of the
United States of America

Library of Congress
Department 100
Washington, D.C. 20540

(202) 287-8350

July 1, 1988

Mr. Van Stevenson
Director of Public Relations
Erol's Inc.
6621 Electronic Drive
Springfield, Virginia 22151

Dear Mr. Stevenson:

Thank you for your willingness to assist my office in gathering information on the uses of new technologies in conjunction with audiovisual works, for use in a study we have been requested to undertake by the U.S. House of Representatives. For your information, I am enclosing a copy of our recent notice in the Federal Register which details many of the issues raised in our study.

The Copyright Office will hold a public hearing as a part of our study on September 8. We would welcome your participation at that hearing in order to elaborate on the written materials you provide.

As my staff has informed you, we need to gather statistical information on the impact of the introduction of works created by new technologies, including colorized motion pictures. One of the issues we are studying is the public access to these new films and the availability of the original black and white versions as well. We have formulated below a number of specific questions related to these issues. If there are any other questions that you believe would also aid our effort, we would be most appreciative of your informing us of them.

1) What films (by title) are now available in colorized form? When were they first available for rental? How many new colorized films are you expecting to be available in the near future?

2) By what process are the works colorized? Which of the processes, if any, is preferred by your customers?

3) For those films that have been colorized, are they also available in the original black and white? If so, were new black and white prints released simultaneously with the release of the colorized version? Subsequent to the release of the colorized version? If black and white versions are not available, were they previously available? If so, when did they cease to be available and what were the reasons for their discontinuace?

4) For those films available in both forms, what are the comparative rental frequencies of the colorized versus the black and white versions? Have rentals of black and white versions increased after the introduction of the colorized versions? (here we would appreciate any and all statistical information you can provide regarding the make-up of those who rent each version, e.g., average age of renters for each version, etc); Do renters of colorized versions later rent the black and white versions? Does it work in the reverse, if so how often?

5) For those films available in both forms, what are the comparative sale frequencies of the colorized versus the black and white versions? (can you duplicate the information on rentals here regarding make-up of persons buying, and do sales of one version stimulate or displace a sale for the other version etc.)

6) What are the relative sales prices for the colorized versus the black and white versions? Do you have any difficulties getting and keeping in stock one type versus the other? Do tha distributers or others offer any incentives for one version over the other? Do your own economics make it more or less favorable for one version?

7) What types of labeling and advertising do you and/or the distributors/producers of the films provide to prevent public confusion about what renters or owners are getting? Are there any questions from renters/buyers about which is the "original" version, or which is the "better" version, and if so how often? How is your staff instructed to respond to these questions? Do you believe any form of labeling should be required to avoid confusion, and if so, what form should those labels take (on the box, in the credits of the movie, etc.)

8) Do you have any other "altered versions" of original films, that is, edited versions, or unedited (for ratings purposes) and do you offer choices of these versions for renters and/or buyers? Which are preferred and why? Concerning dubbed and subtitled foreign language movies, do you usually offer both versions and if so, which is preferred?

Finally, any general impressions not covered by these questions which you or your company wish to comment on would be greatly appreciated. Please feel free to elaborate on any of the questions asked above.

We fully understand that company policy may prevent your answering some of these questions. If at any point, you would like to keep the answers to some of these questions confidential, we will respect that

request. The purpose of this information is for inclusion in our study regarding general industry-wide uses and we would not single out your company on any answers which you feel are inappropriate or embarrassing. We are in fact, greatly appreciative of the cooperation of Erol's.

As a reminder, any written testimony for our September 8 hearing is requested by August 17 if possible, and in any case, no later than August 24. If you have any questions or comments, please don't hesitate to contact me or Eric Schwartz in my office at (202) 287-8350.

Sincerely,

Ralph Oman
Register of Copyrights

Enclosure

RO:cjd

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TESTIMONY OF VANS STEVENSON

FOR

EROL'S INC.

BEFORE

THE UNITED STATES COPYRIGHT OFFICE

ON

USES OF NEW TECHNOLOGIES WITH AUDIOVISUAL WORKS

September 8, 1988





MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE INVITATION AND OPPORTUNITY TO APPEAR BEFORE YOU TODAY AS PART OF YOUR RESEARCH OF NEW TECHNOLOGIES IN CONJUNCTION WITH AUDIO-VISUAL WORKS, SPECIFICALLY DEALING WITH THE COLORIZATION OF MOTION PICTURES ORIGINALLY PRODUCED IN BLACK AND WHITE. MY NAME IS VANS STEVENSON. I AM DIRECTOR OF PUBLIC RELATIONS FOR EROL'S INC., A SUBURBAN WASHINGTON, D.C. BASED VIDEO RENTAL AND SALE CHAIN WITH 165 STORES IN NINE STATES AND THE DISTRICT OF COLUMBIA.

WE HAVE BEEN MARKETING A HANDFUL OF COLORIZED MOTION PICTURES ON VIDEO CASSETTE, PRIMARILY FOR SALE, OVER THE PAST TWO YEARS.

IT HAS BECOME EVIDENT TO US BASED ON SALES THAT THERE IS A SEGMENT OF THE POPULATION THAT PREFERS TO PURCHASE THE COLORIZED VERSION OF CERTAIN MOVIES ON VIDEO TAPE. IT IS LIKELY THAT MANY OF OUR CUSTOMERS THAT PURCHASED THE COLORIZED VERSION WOULD NOT HAVE BOUGHT THE TITLE IF IT WAS NOT AVAILABLE IN COLOR.

IN 1987, FOR EXAMPLE, WE MERCHANDISED "IT'S A WONDERFUL LIFE" IN BOTH BLACK AND WHITE AND COLOR. WE SOLD 2,113 COPIES IN COLOR AT $9.95 AND 648 COPIES IN BLACK AND WHITE AT $7.95.

WE SUPPORT THE POSITION OF THE VIDEO SOFTWARE DEALERS ASSOCIATION, OF WHICH EROL'S IS A MEMBER. THE CONSUMER SHOULD HAVE FREEDOM OF CHOICE IF SUCH A CHOICE EXISTS.

EROL'S IS A RETAILER IN BUSINESS TO SERVE THE GENERAL PUBLIC'S DESIRE FOR MOTION PICTURES ON VIDEO CASSETTE. THE SUCCESS OF OUR BUSINESS IS BASED ON THE DEMAND FOR THAT PRODUCT. COLORIZED MOVIES ON VIDEO CASSETTE WILL ONLY SURVIVE IF THEIR IS CONSUMER DEMAND. AT THIS POINT, IT APPEARS THERE WILL CONTINUE TO BE A DEMAND FOR BOTH COLORIZED AS WELL AS BLACK AND WHITE VERSIONS OF CERTAIN MOTION PICTURES.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE INCLUDING THOSE POSED IN MR OMAN'S LETTER OF JULY 1 WHICH I RESPONDED TO AUGUST 22. THANK YOU.

advuscro.vs

VIDEO TREASURES
VIDEO CASSETTE SALES, INC.
87 Essex Street,
Hackensack, New Jersey 07601

Telephone (201) 489-7991
Telex 133404 NY RECORD HAK
Fax: (201) 489-4689

OFFICE OF REGISTER OF COPYRIGHTS
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AUG. 25. 1988

Comment Letter
RM 88-3
No. 11

August 17, 1988

Office of the Register of Copyrights
Library of Congress, Dept. 100
Washington, DC 20540

re: Docket #RM88-3

Gentlemen:

This statement is submitted on behalf of Video Treasures, Inc. and our affiliate Video Cassette Sales, Inc., in connection with the hearing to be held on September 8, 1988, pertaining to, among other things, how colorization of motion picture programming has and may affect the market for such films.

In a few short years, Video Treasures and Video Cassette Sales have become leaders in the mid-price home video market, specializing in reissuing motion pictures at popular prices geared to the sell-through market. We have exclusive licensing arrangements with Hal Roach Studios, Inc. and Color Systems Technology, Inc. and presently have 20 colorized films in release and propose to release 11 additional colorized films into the market over the next 12 months, making us the leading distributor of colorized home videos in the United States, and thus probably have more experience in this market than any other company.

In certain instances, we have found that the demand for the black and white version of a colorized film is not sufficient for us to maintain the black and white version in our catalog, but we are ready, willing and able to meet that demand when and if it arises. We believe that most consumers are sophisticated enough to realize that by merely turning down the color dial of their television sets, they can "create" a black and white version of these films. In those instances where sufficient consumer demand does exist, such as with "It's A Wonderful Life" and "Africa Screams," we continue to offer the black and white version. We have found in comparative situations that the demand for the colorized version far exceeds the demand for the black and white version for a particular film. In the case of "It's A Wonderful Life," we have received reports from our own customers indicating the colorized version outselling the black and white version as much as five to one.

The most significant factor that we have found in dealing with colorized films has been that in most instances if the film had not been colorized, we would not have released that into the home video market. Initially, many of the films that were colorized were in the public domain and had been widely

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distributed in the home video market. The colorization of the film has created a new market and a new audience. On the other hand, our experience with two Laurel and Hardy films has proved to us that colorization has allowed these films to find a new audience with consumers that would have not otherwise purchased the videos had they been released in their original black and white version.

We have had both success and failure in distributing video cassettes of colorized films and have found that the marketplace is the best judge of whether or not we have made a correct decision and see no need for legislative intervention in the field. As a user of copyrighted materials, be they colorized or not, we believe that any legislation in this area will lead eventually to further modifications of our traditional Copyright Laws which would be inconsistent with both the legislative history of those laws and their Constitutional mandate. Given the composite nature of motion picture production it would appear to us that this area should be left to private contractual or collective bargaining negotiations.

In summary, it is our opinion that colorization has widened the audience for many motion pictures, thus increasing the demand and assuring availability of the original to the public and has had, on an overall basis, a beneficial effect.

Respectively submitted by,

VIDEO CASSETTE SALES, INC. AND VIDEO TREASURES, INC.

By: _____
George Port, General Manager

GPP/ma

BY TELEFAX: PAGE 1 OF 27

DONALD L. PEVSNER
ATTORNEY AT LAW
7280 SOUTHWEST 134 TERRACE
MIAMI, FLORIDA 33183
TELEPHONE (305) 233-3337
FACSIMILE (305) 233-7891

September 6, 1988

Eric Schwartz, Esq.
United States Copyright Office
Library of Congress Building
Washington, D.C.

Re.: FCC time-compression pleadings and description of the overall issue.

Dear Mr. Schwartz:

Pursuant to our telephone chat of this afternoon, I am pleased to enclose the crucial documents surrounding my continuing pro bono publico effort to stamp out the pernicious practice of undisclosed time-compression on the nation's television stations.

Please proceed to photocopy these documents, in chronological order, and distribute them to the press at the hearings you shall hold on Thursday, September 8th.

I hereby reiterate my request that you do your very best to place me on your witness agenda between 11:00 A.M. and 7:00 P.M. on September 8th, as I continue to believe that this sort of formal appearance will be required to properly place this explosive issue before the public.

Thank you for your kind cooperation.

Very truly yours,

Donald L. Pevsner
Attorney-at-Law

DLP: hs
Attachments: 26 pages

Comment Letter
RM 88-3
No. 12

453

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Local News

Monday, June 30, 1986 The Miami Herald Section B



Carl Hiaasen

Play it again, Sam, and speed it up this time

Look what they've done to Humphrey Bogart.

They've Lexiconned him. He walks faster, talks faster, even puffs his cigarette a little faster. And when his pal Sam plays it again, he plays faster, too.

A Lexicon is a computer that speeds up movies right before your eyes. It's so slick that most people can't tell what's happening.

It was only by luck that Don Pevsner, a Miami attorney and travel writer, found out about the machine.

Not long ago WCIX-Channel 6 aired *Casablanca*, the classic starring Bogart and Ingrid Bergman. A big fan, Pevsner videotaped the movie over an earlier version in which an entire scene (the one where Bergman pulls a gun on Bogey) had been brutally edited out.

However, when Pevsner watched his tape of the uncut movie, he was puzzled to discover that it came out shorter than the edited version. Somehow the film had shrunk. Pevsner immediately called WCIX and demanded an explanation. It was then he learned about the Lexicon.

More precisely, the Lexicon 1200 Audio Time Compressor. It's a clever device used by many TV stations to squeeze longer programs into shorter time slots. The Lexicon accomplishes this by electronically speeding the film. Simultaneously the computer adjusts voice frequencies so that the characters sound completely normal, instead of like Donald Duck.

The process is so smooth and exact that most viewers don't catch on. Pevsner had to watch *Casablanca* twice before he noticed the quick-stepping German soldiers stepping a bit too quickly.

Lexicon has been a boon for movie-oriented TV stations. If you have a two-hour film and a two-hour slot, you've got no time for commercials. But if you Lexicon the film, presto!

"You can take 10 percent without anybody noticing," says Ron Noonan, president of Lexicon, Inc. Noonan says his firm has sold more than 300 Lexicons, which sell for about $12,000 each. A more sophisticated, second-generation model will debut in August.

Not only is Lexicon used on films, but it also compresses old syndicated TV shows such as *Gilligan's Island* — though it's easier to work up an anger over Bogey than over Bob Denver.

Craig Struzzeri, film director of Channel 6, says he does notice the difference in a movie run through the Lexicon. "It sort of jumps, and to me it's kind of annoying." But he says it's still better than cutting whole scenes to make time for advertisers.

Don Pevsner says the Lexicon is nothing but a money machine. "A triumph of technology over honesty. This insidious machine is out there ... and people are none the wiser."

Replies Ron Noonan: "Would you rather have the tyranny of the scissors?"

The Lexicon 1200 is capable of shrinking a film or tape by as much as 33 percent, though Noonan acknowledges that such speeds are so jarring as to surpass "the limit of good taste." He says that, aesthetically, the ideal time compression is about 8 percent — or almost 10 minutes out of an average 120-minute movie.

As media technology, the Lexicon raises provocative possibilities. So many TV events could benefit by computerized acceleration — Reagan's press conferences, the World Cup finals, the Iowa Democratic caucus, and so on.

On the other hand, the secret fast-forwarding of great movies does seem a sneaky violation of art, sort of like playing Beethoven's Fifth at 34½ rpm.

Pevsner wants the FCC to require all stations to run a disclaimer before broadcasting a Lexiconned film. The disclaimer would say: "This movie has been artificially speeded up to enhance our revenues."

Says Ron Noonan: "There's nothing free in this life."

By the way, there's only one part of a Lexiconned movie program that is never speeded up on television.

The commercials, of course.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Petition for Rule Making of Donald L. Pevsner, Esq. on the subject of regulating the undisclosed usage of film speed-up machines.	:	Docket

COMES NOW Donald L. Pevsner, Esq., in pro per., pursuant to 5 U.S.C. 553(e) and 47 CFR 1.401-1.407, and petitions the Commission for a rule making that would regulate the undisclosed usage of film speed-up machines by television broadcasting stations under its jurisdiction, and as grounds therefor says:

1. Petitioner became aware of the existence of machines that speed-up, or "compress," films into a shorter elapsed running time wholly by accident.

In May, 1986, WCIX-TV, VHF Channel 6 in Miami, Florida, aired the film, "Casablanca." When this licensee had last run this film, it had been rather brutally edited so that more commercials could be inserted. Accordingly, your Petitioner telephoned said licensee in advance to inquire whether or not the film had again been cut.

"No, but of course it's been Lexiconned," was the reply. This unknown term was thereupon explained as meaning that a device to speed up the film while leaving the sound-track pitch intact was used, thereby enabling the film to be shown in less time and permitting more commercials to occupy its two-hour time slot.

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Note that a "Lexicon" is a particular brand of speed-up machine. This Petition is intended to apply equally to all machines that perform a similar function.

2. Machines like the "Lexicon" are used to speed-up film programs by up to ten percent. The cutoff point is, of course, highly variable, but is customarily set JUST BELOW a point at which the figures on screen will be OBVIOUSLY jerking around like speeded-up cartoon characters, thus alerting unsuspecting viewers that something strange is happening.

When one is forewarned through knowledge, the negative effect of a film speed-up machine is clear. The figures DO jerk around on screen. However, the net effect is tolerated by the viewing public only because no viewer ever imagines, in his wildest dreams, that such a nasty little device can not only exist, but be used with relish by a probable vast number of greedy liconsees. For such licensees, the reward is an undisclosed, extra maximization of profits earned by taking advantage of their unsuspecting, duped viewers. For the viewers, there may exist a vague uneasiness that is generated by the passive viewing of technologically mutilated programming. It is long overdue that such viewers receive the chance to learn what tricks are being played on them by licensees.

3. Petitioner contends that the undisclosed usage of a "Lexicon"-type device is a <u>prima facie</u> deceptive practice, and, as such, should be banned by the Commission.

The most suitable analogy is to the banned practice of subliminal advertising. This practice was held to be contrary

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follows:

> "We believe that use of subliminal perception is inconsistent with the obligations of a licensee, and therefore we take this occasion to make clear that broadcasts employing such techniques are contrary to the public interest. Whether effective or not, such broadcasts clearly are intended to be deceptive."

(A news release on the proceeding which banned subliminal advertising is summarized in FCC 74-78, January 24, 1974, attached hereto as Petitioner's EXHIBIT A.)

The public is presently being grossly deceived by those licensees that employ "Lexicon"-type devices. Viewers possess the logical, natural belief that they are being shown films at their normal speed, as filmed--after all, who can imagine any reasonable alternative to such supposition? However, thanks to technology and a total lack of licensee scruples, including a total lack of respect for the sensibilities of the audience and of film directors alike, this is manifestly not the case in a large number of cases.

Viewer deception is insured to be successful through the speed-up machines' being scientifically calibrated at JUST BELOW the level of a downright affront to the visual sense. Of course, the banned practice of subliminal advertising is also wholly dependent for success upon the viewer's never finding out how he has been manipulated by the "tools of the trade."

Viewers have a measure of self-protection when confronted by a film adorned with commercial clutter, an edited film, or a film that has been artificially divided into two parts in order

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on their face, and viewers may simply turn off the set, change channels, or never tune-in in the first place. The victims of film speed-up machines have NO such choice, as the licensee users of such devices have been far too clever for them, and have by definition precluded them from making a rational choice.

As with subliminal advertising, which a unanimous Commission banned outright, the viewer victims of film speed-up machines are led like lambs to the slaughter. In the language set forth in Exhibit A hereto, they are "consciously unaware" of their manipulation through licensees' usage of such devices.

4. Petitioner believes that the Commission has a clear duty not to continue to tolerate the status quo in this matter. If there have been no previous consumer complaints prior to the filing of this Petition, the reason is clear: no one is going to complain about a practice that is virtually impossible to discover on one's own, absent disclosure of the facts by someone within the television broadcasting industry or the presence of an overly-heavy hand on the speed-up knob. It is a fair statement that, if the facts were disclosed and a public poll taken on the deception and public-interest issues in this case, only a licensee would argue that the practice was not deceptive and the public interest was not betrayed thereby.

5. Assuming, arguendo, that the Commission agrees that a rule making proceeding would be in the public interest in this case, what sort of rule should be devised to protect the public? [illegible] the best choice would be to BAN

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No one at the Commission ever entertained the notion of permitting subliminal advertising to exist side-by-side with periodic "warnings" that viewers were thereby being cheated and manipulated.

As an acceptable fall-back position, your Petitioner suggests a requirement that a mandatory notice occupy a television screen at any time that a film speed-up machine is in use by a licensee. This notice must be CONTINUOUS, as a viewer has been very ill-used indeed if he must unsuspectingly watch a speeded-up program for 15 or 30 minutes BEFORE finding out, via an intermittent "super", that he has been deceived and manipulated up until that first moment of "awakening" upon notice. This notice must also be PROMINENT, consisting either of words superimposed upon the screen, or of an instantly-recognizable symbol that the public has been trained to recognize. (A frenetic cartoon rabbit, traveling at 150 miles per hour while cranking a money-machine and grinning nastily at the viewing audience, would be ideal and curiously fitting--though a pig would be more on point.)

6. Petitioner requests oral argument at an appropriate stage of this proceeding.

WHEREFORE Petitioner respectfully requests that the Commission grant the aforesaid Petition, and promulgate an equitable rule that will put an end to the clever deception of millions of American television viewers by those overwhelmingly greedy licensees

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for whom NOTHING--not even having only 60 minutes in an hour--is ever enough.

Respectfully submitted,

DONALD L. PEVSNER, ESQ.
7280 SW 134 Terrace
Miami, FL 33156
TEL.:(305) 233-3337

Miami, Florida
July 29, 1986

I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed by first-class mail on this 29th day of July, 1986, to the following respondents:

1. Taft Broadcasting Company (Owner of WCIX-TV)
   1718 Young Street
   Cincinnati, OH 45210
   (Attention: General Counsel)

2. President
   Directors Guild of America
   7950 West Sunset Boulevard
   Los Angeles, CA 90046

DONALD L. PEVSNER, ESQ.

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PUBLIC NOTICE

Federal Communications Commission ■ 1919 M Street, NW. ■ Washington, D.C. 20554

For recorded listing of releases and texts call 632-0002

For general information call 632-7260

FCC 74-78
08055
January 24, 1974 - B

BROADCAST OF INFORMATION BY MEANS OF "SUBLIMINAL PERCEPTION" TECHNIQUES

Shortly before Christmas 1973 the Commission received a few complaints that some television stations had broadcast an advertisement which contained a statement of such short duration that most viewers were unaware of it -- at least, consciously unaware of it. The message broadcast in this manner was "Get It," referring to the product advertised in the commercial. Since this statement could not be consciously perceived by most persons, it involved use of the "subliminal perception" technique which was the subject of Commission inquiry years ago.

In a Public Notice dated November 27, 1957, the Commission noted that the Television Code Board of the NAB (then the NARTB) had asked its subscribers to refer any proposals for television use of subliminal perception to the Board. In that Notice, the Commission stated in part:

> Deep concern has been expressed by members of the public, the broadcast industry and leaders in public life with respect to the use of "subliminal perception" advertising by television stations. That this concern has a firm basis is evidenced by the action of the NARTB and the caution with which television licensees have approached the technique. Obviously, it is a matter which vitally concerns the public interest. Accordingly, the Commission's study is being directed toward determining what appropriate steps, if any, should be taken by the Commission with respect to the possible use of the above technique by the television licensees. The posture of the problem is such that the public interest is not in immediate danger of being adversely affected. Ample proof has been given of the recognition by television licensees of their responsibilities and obligation to operate their stations in the public interest.

At that time the Commission had no information that any television station had made use of subliminal perception techniques, except on an experimental basis and for scientific purposes, and after 1957 no instance of telecasting

(over)

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...t such messages came to the attention of the Commission until the 1973 pre-Christmas advertising campaign, in which an advertising agency distributed spots involving the "Get It" statement.

Commission inquiry revealed that the NAB TV Code Authority had learned of the use of the subliminal messages in late November and had received a statement from the advertising agency that it was dispatching telegrams to all stations to which the advertisements had been sent, informing them of the subliminal statements, authorizing the stations to delete the statements from the spots and informing the stations that film prints which did not contain the "Get It" flashes would be sent to them. (The Television Code now prohibits use of "Any technique whereby an attempt is made to convey information to the viewer by transmitting messages below the threshold of normal awareness . . .")

Despite the Code Authority's action, some stations apparently continued to broadcast spots containing the "Get It" statement, and some state they have no record of having received the telegram from the agency.

We believe that use of subliminal perception is inconsistent with the obligations of a licensee, and therefore we take this occasion to make clear that broadcasts employing such techniques are contrary to the public interest. Whether effective or not, such broadcasts clearly are intended to be deceptive.

In closing, we note that the Federal Trade Commission also received a complaint about the pre-Christmas announcements, and that it is making inquiry into the matter in light of the laws that it administers.

Action by the Commission January 23, 1974. Commissioners Burch (Chairman), Lee, Reid, Wiley and Hooks.

Sent to all broadcast licensees.

- FCC -

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TAYLOR, ROTH & BUSH

A Law Corporation

Robert A. Bush
Christopher D. Cameron
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October 29, 1986

Ms. Barbara Kriesman
Legal Division
Federal Communications Commission
Washington, D.C. 20544

Re: FCC Rule-Making Petition of Donald L. Pevsner on Film Speed-up Machines

Dear Ms. Kriesman:

This is to advise you that the Directors' Guild of America, Inc., ("DGA" or "Guild") representing 8,000 employees in the film and television industry in the United States, urges the FCC to issue a public notice for rule-making on the above-referenced subject. The Guild is enthusiastically in agreement with the substance of the arguments raised in Mr. Pevsner's petition, and stands staunchly opposed to any technological change which threatens to alter a fully-conceived work of art by distorting it into a vehicle for selling more commercial time, and ultimately, more commercial product.

As noted in Mr. Pevsner's petition, viewers must be made aware of the subtle transformation taking place, currently without their knowledge. The speeding up of the projection of film is indeed closely analogous to the subliminal advertising the FCC banned: it is an unwarranted, undisclosed intrusion into the film-viewing experience, one completely unintended by -- and indeed, repugnant to -- the creators of the work solely for the purpose of facilitating yet further exposure of the public to the blandishments of commercial advertisement.

The FCC has a duty to protect the viewing public from deception such as that wrought by speed-up machines. As with subliminal advertising, the undisclosed use of Lexicons and similar speed-up devices is, to put it charitably, "inconsistent with the obligations of licensees," and contrary to the public interest (See Exhibit "A" to the Pevsner petition.) The FCC must step into this void to prevent, or at least regulate through rule-making and increased public awareness, the use of such devices. Absent such regulation the use of speed-up devices will undoubtedly spread as their commercial potential becomes known, with deleterious effect upon the films themselves, and with massive deception visited upon the public.

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The DGA therefore respectfully urges the FCC to issue a public notice based upon Mr. Pevsner's petition, the foregoing, and other statements in support thereof, and adopt regulations that will protect the public from the silent mendacity inflicted by film speed-up devices like Lexicon.

Very truly yours,

BAYLOR, ROTH & BUSH
A Law Corporation

JAY D. ROTH

JDR/dm

cc: Michael H. Franklin, National Exec. Director, DGA
Donald Pevsner ✓

dm dga 2

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV 4 1986

IN REPLY REFER TO

Mr. Donald L. Fevsner, Esq.
7280 SW 134 Terrace
Miami, Florida 33156

Dear Mr. Fevsner:

This is in response to your petition for rule making dated July 29, 1986, concerning use of "film speed-up machines by television broadcast stations." Specifically, the petition refers to a machine known as the "Lexicon." You contend that use of the device is analogous to "subliminal advertising," which the Commission has found to be inconsistent with the obligation of a broadcast licensee.

Upon review, we do not draw the analogy to subliminal advertising nor any other prohibited practice of licensees. Each licensee has the discretion to edit programming in any manner consistent with law. The only apparent issue might be whether the television station used the artistic work in accordance with the terms of any agreements with the owner of the work; however, this issue falls outside the jurisdiction of the Commission.

Therefore, under authority of Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Sections 1.401(e), 0.281, 0.61 of the Commission's Rules and Regulations your petition for rule making is hereby denied.

Sincerely,

James C. McKinney

James C. McKinney
Chief, Mass Media Bureau

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Petition for Rule Making of Donald L. Pevsner, Esq. on the subject of regulating the undisclosed usage of film speed-up machines.	Docket

PETITION FOR RECONSIDERATION

COMES NOW Donald L. Pevsner, Esq., petitioner in the above-captioned proceeding, and petitions for reconsideration of that letter, dated November 4, 1986, whereby Mr. James C. McKinney, Chief, Mass Media Bureau, acting under delegated authority, denied the petition for rulemaking therein, and as grounds therefor says:

1. This petition for reconsideration is filed pursuant to Section 1.429(a) of the Commission's procedural regulations.

2. Pursuant to Section 1.429(c) of the Commission's procedural regulations, petitioner hereby states that the issues of deception raised by this proceeding are sufficiently blatant to warrant a full Commission hearing, with ample opportunity for input of public comments. Instead, a single staff official has chosen to totally ignore the deception issue in his denial action, instead relying on a pure laissez-faire philosophy that makes a total mockery of the Commission's duty to regulate the television broadcasting industry--particularly when that industry is

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systematically engaged in committing a base deception and fraud upon the viewing public, as is manifestly the case here.

3. Petitioner requests that, in view of the mind-set of Mr. McKinney, the entire Commission act on the instant petition for reconsideration, and not refer it back to Mr. McKinney for a "rubber-stamp" reiteration of his prior, individual action under delegated authority.

4. The entire Commission is respectfully requested to decide whether, in fact, the nation's licensees do have the absolute and unfettered right to present programming that has been secretly distorted without notifying the viewing audience simultaneously of such fundamental distortion. Mr. McKinney states that, "Each licensee has the discretion to edit programming in any manner consistent with law." (Emphasis Added) Obviously, the closely-analagous practice of subliminal advertising, banned by a unanimous Commission nearly thirteen years ago, was held by the Commission to be both "contrary to the public interest" and "clearly...intended to be deceptive." (Order language). The contested practice of using film speed-up machines clearly fits both of these tests as well. If the Commission does not at least take the first step of calling for public comments in a formal proceeding in this matter, the nation's viewers will surely be entitled to demand that they be better-protected than Mr. McKinney has thus far done, and better than a Commission

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that might refuse this basic and fair step could ever do.

Respectfully submitted,

Donald L. Pevsner
Attorney-at-Law
7280 SW 134 Terrace
Miami, FL 33156
TEL.:(305) 233-3337

Miami, Florida
November 20, 1986

I HEREBY CERTIFY that a true copy of this pleading has been placed in the first-class mails of the United States, addressed to the respondent parties hereto, on this twentieth day of November, 1986.

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December 3, 1986

Mr. William Tricarico, Secretary
Federal Communications Commission
Washington, D.C 20554

RE: Petition for Reconsideration of Donald L. Pevsner on Film Speed-Up Machines

Dear Mr. Tricarico:

The Directors' Guild of America, Inc., ("DGA" or "Guild") urges the Federal Communications Commission to reconsider its November 4, 1986 denial of Donald L. Pevsner's Petition for Rule-making. The issue of televising films at an accelerated pace deserves a public airing. In what other area of television film viewing is the public left so completely in the dark?

Mr. McKinney's letter of November 4, 1986 compares speed-up techniques with editing, which he states a licensee may perform "in any manner consistent with law." However, typical television editing is obvious to any viewer, since viewing is visibly and jarringly interrupted for commercials and station breaks. Other editing may be inherent in the transfer of the film from the theatre to the small screen. But at least films that are so treated routinely carry "edited for television" disclaimers that inform the public in advance that they are being presented with something other than the original production intended for theatrical showing. Thus, with respect to the editing of programming generally given free rein by the Commission, the average viewer is clearly cognizant of its nature, and to a large degree, its extent.

Providing helpful and unobtrusive information about the screen presentation is a routine part of a licensee's duties, and one perfectly consistent with deregulation, since an informed public makes the best consumer choices. For example, licensees must identify sponsors of its programming. Such information may provide a viewer with helpful insight about the content

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of that programming. The FCC should demand no less when licensees secretly tamper with a program's quality; the Commission must at least require licensees to let the public in on the process, if not prohibit it altogether.

The link between subliminal ads and speed-up is secrecy. In the case of the latter, broadcasters are taking a finished product and substantially altering it in a way that purportedly is not ordinarily perceptible to the consciousness of the average viewer. Yet that is what makes the process dangerous. It is something that the public ought to know about in advance, in order to make informed choices about viewing; that informed viewer's choice is at least available with respect to the other aspects of editing practices to which Mr. McKinney refers. Where, in instances such as speed-up, the "editing" process is occurring without viewer awareness, the Commission has a duty to ensure that the public is let in on the secret. Certainly the first preliminary step in the rulemaking process must be taken: a public inquiry into the frequency of use of speed-up technology, its possible deleterious effect on the viewing public, and the costs and benefits of disclosing its use to the public, or otherwise regulating it. To shut off debate at its inception can hardly be in the public interest.

The DGA therefore urges the Commission to grant Mr. Pevsner's Petition for Reconsideration, and facilitate the public debate that this issue clearly deserves.

Very truly yours,

Taylor, Roth & Bush
A Law Corporation

Ira L. Gottlieb

IRA L. GOTTLIEB
Attorneys for D.G.A., Inc.

JDR:pjm

cc: Michael Franklin
Donald L. Pevsner

DGA #1

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUL 21 1987

IN REPLY REFER TO

Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510-6275

Dear Senator Leahy:

This is with reference to your recent inquiry as to the status of a petition for reconsideration filed by Donald Pevsner of Miami, Florida. Mr. Pevsner requested that the Commission initiate a rule making proceeding to consider regulations that would prohibit the use of devices that compress the projection time of films. Mr. Pevsner claimed that these devices are used to permit the broadcast of additional commercials during a particular time period. The Commission's staff denied this request for rule making, explaining that the manner in which program material is edited is well within the discretion of a licensee and inappropriate for Commission oversite. The subject petition for reconsideration is now under active review and a response from the Commission is expected this quarter.

Staff actions denying rule making petitions may be appealed within 30 days for reconsideration. Thereafter, the rules provide for appeals to the full Commission and finally, to the United States Court of Appeals for the District of Columbia.

I am hopeful that the foregoing has been responsive to your inquiry.

Sincerely,

William H. Johnson

William H. Johnson
Acting Chief, Mass Media Bureau

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September 15, 1987

Mr. Elliot Silverstein
Chairman-President's Committee
Directors Guild of America
7950 Sunset Boulevard
Los Angeles, CA 90046

Re.: The "Lexicon" Deception

Dear Mr. Silverstein:

I would like to relate the way in which I accidentally discovered the so-called "Lexicon" time-compression process in America's television industry, and why this is a vitally important issue in which your Guild should participate.

During the summer of 1985, WCIX-TV (Channel 6 in Miami) telecast the classic movie, "CASABLANCA." As the owner of a home VCR, I decided to tape it for home use, off the air. And, as I wanted an unfettered movie, I stayed in front of my TV set to edit out the commercials.

Well over an hour into the film, I discovered that a key scene was missing: the famous scene in which Ingrid Bergman draws a gun on Humphrey Bogart to get the vital "letters of transit." Having, in essence, wasted well over an hour of my time on a gutted film, I nevertheless continued to tape the remainder of the film while editing out the commercials, on the theory that a chopped-up film was still better than having none at all in my closet. There I placed the finished tape, where it remained, unviewed, for a year.

In summer, 1986, Channel 6 again scheduled "CASABLANCA" for its 8-10PM weekday-evening time slot. This time around, I decided to call Channel 6 ahead of time, to see whether they had mutilated the film a second time around. I telephoned directly to the Engineering Department, where the answer I received was: "The film hasn't been edited, but it's been Lexiconned." Not understanding the meaning of "Lexiconned," I went ahead and taped this movie showing over the prior year's tape entry. When I was finished, having seen a film with the missing Bergman/Bogart scene restored, I proceeded to log the tape-counter numbers. And--surprise!-- I found at least 5-6 minutes of leftover tape from the previous year. The UNCUT movie had run 5-6 minutes LESS THAN the edited, prior version. What was going on?

The answer: a Lexicon Time Compressor, manufactured by The Lexicon Corporation of Waltham, Massachusetts, was used to

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artificially speed up "CASABLANCA." By doing this, WCIX-TV gained a full twelve (12) minutes in a 120-minute time slot; using a ten per cent (10%) speed-up adjustment on its machine, which "found" twelve minutes was used to cram in extra commercials, over and above an already abundant number.

HUNDREDS of Lexicon devices have been sold to television broadcasting stations all across the United States. Independent stations are the prime customers, but it is probable that network-owned affiliates (and probably the networks themselves) own these devices as well. Additionally, film packaging firms supplying the television broadcasting industry may own such devices, supplying pre-speeded-up product to individual stations. Lexicons have been in use at least since 1983, when Tom Shales wrote the first known newspaper column about them for The Washington POST. I estimate that at least 1000 such machines are in use today in the U.S.--with "new, improved models" on the way.

When I looked again at the Lexiconned version of "CASABLANCA," it was painfully obvious--given my secret information about the practice--that something was indeed "wrong" with the film. Figures moved jerkily and too quickly; raindrops fell as if each drop had a little lead weight attached to it. And 350-pound Sydney Greenstreet virtually levitated out of his chair, as if launched from Cape Kennedy. But none of this would be credenced by the hundreds of millions of average television viewers--quite simply, no one would rationally imagine that a television station would DARE to artificially, secretly speed up a feature film or other program, solely in order to cram in more commercials and improve the almighty bottom-line. I found, with "20-20 hindsight," that the viewing of such speeded-up, "Lexiconned" films produced a feeling of actual physical tension in several viewers, including me...and this factor alone surely warrants a formal investigation by the appropriate legislative and regulatory bodies.

But the sneaky, surreptitious deceit of the entire U.S. television viewing public by the enormously wealthy television broadcasting industry is the principal matter that demands equitable resolution. Clearly, the stations involved would most probably never "Lexicon" their film showings if the public was on proper notice of the practice. As with the famous case of subliminal advertising, declared deceptive and unlawful by a unanimous Federal Communications Commission in 1974 on the grounds of inherent deception, the practice can only continue in the presence of total viewer ignorance.

In the absence of existing FCC regulations on point, I decided to file a formal Petition for Rulemaking with the FCC, and did so on July 29, 1986. In the Petition, I asked the FCC for the following

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relief, in order of social desirability:

(1) Order "Lexicon"-type devices outlawed for use by all television broadcasting licensees, as a matter of fundamental public policy, on the principal grounds of deception and adverse physical (and ethical) effects.

(2) As a backup position ONLY, forbid the usage of such devices by any television broadcasting licensee UNLESS a continuous, clearly-explained and prominent symbol is superimposed on the screen during all times such devices are in use. (This would apply to both individual station machines and pre-packaged product that has been Lexiconned.)

The public cannot discover speeded-up films on their own by such give-aways as voice tracks which sound like "Alvin and the Chipmunks," because this insidious marvel and perversion of technology possesses a special circuit that leaves voice-pitch normal while speeding-up the visual image. (I doubt the basic research had quite this amoral use in mind.)

At the time of my Petition filing, the FCC Chairman was Mark Fowler, a notorious laissez-faire Reagan-administration political appointee. The Chief of the Mass Media Bureau was James C. McKinney, who similarly did not get his high political post by disagreeing with fundamental Administration policy on big business where the television industry is concerned. On November 4, 1986, Mr. McKinney unilaterally dismissed my Petition, acting on so-called "delegated authority." NO public comment had ever been sought by this arrogant arbiter; NO public hearings were ever held.

On November 20, 1986, upon receiving Mr. McKinney's pro forma dismissal letter, I filed a Petition for Reconsideration of his action. The docket file has remained open at the FCC since then, with no action taken on my procedural filing. Most recently, Mr. McKinney's successor, William H. Johnson, has advised Senator Patrick J. Leahy (D.-Vermont) that it plans to act on the Petition for Reconsideration during the current quarter.

It is obvious that the BEST way to obtain a measure of fairness for the American television viewer is for the FCC to fulfill its statutory duty to the public, by proceeding forthwith to responsibly regulate the undisclosed usage of "Lexicon"-type devices. The best way for this process to occur is to, first, induce the FCC to grant my Petition for Reconsideration, and proceed to order public hearings on the matter at the earliest possible moment. Clearly, the public deserves to KNOW ABOUT the "Lexicon" scam, and to have ample opportunity to express its probable opposition to the practice via letters, Mailgrams and

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by the FCC in such an important matter of fair play, ethics and principle do a rank disservice to the American people, and do not put the FCC in a favorable light. Irrespective of the right-wing ideological bent of the present Administration, the FCC would be hard-pressed to just ignore a massive outpouring of public sentiment in favor of responsible regulation of "Lexicon" usage.

But--"Catch-22"--the public will never even find out about the "Lexicon" issue without full, comprehensive coverage and disclosures in the nation's press. The CBS EVENING NEWS did carry a four-minute feature story on the Lexicon, on June 26, 1987. But there is no real substitute for newspapers as the best way to get the news to the public.

I therefore strongly urge the Directors Guild of America to continue its anti-Lexicon efforts by issuing appropriate press releases to the nation's print (and broadcast) media, while simultaneously formally asking the FCC for full public hearings so that the public may be properly protected. It will then be up to the nation's print media, primarily, to place this important news story before the nation's cleverly-cheated television viewers. I predict that public reaction will be in strong opposition to "Lexiconning," at least when kept secret for reasons of bald industry profit.

I stand ready to work with your Guild in, however belatedly (after at least four years of "anything goes," as the shiny, new Lexicons tumble out of their cartons at TV stations all across the land), restoring a reasonable modicum of honesty to the television broadcasting industry in this area. I cannot imagine another country, anywhere in the world, that would permit (or justify) "Lexiconning" to occur at all. It is a sad commentary on the lack of scruples and untrammeled greed of far too many television executives that a need for this device could have ever been perceived--and on the mentality of recently-departed, top FCC officials that, once having been formally alerted to the existence of such an inexcusable practice, they could decline to get involved on the grounds of selfish ideology. The American television viewer deserves better--and I trust we can help them to achieve much-needed relief.

Very truly yours,

Donald L. Pevsner
Attorney-at-Law//
Senior Editor, U.S., BUSINESS TRAVELLER
Magazine (London)// Author, "TRAVEL WISE"
(Knight-Ridder News Service)

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File No.: 12195/6040

February 17, 1988

Mr. William Tricarico, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Petition for Reconsideration of
Donald L. Pevsner on Film Speed-Up Machines

Dear Mr. Tricarico:

This letter is to reiterate the Directors' Guild of America, Inc.'s ("DGA" or "Guild") request that the Federal Communications Commission reconsider its November 4, 1986 denial of Donald L. Pevsner's Petition for Rule-making, and to hold public hearings on the matter. We have been informed that no decision on that petition has yet been made.

The time-compression process in movie projection is particularly insidious because it distorts and alters the original, intended viewing experience without the knowledge of the viewer. The DGA is informed that utilization of this process is becoming more widespread, yet public awareness of the deception and misrepresentation being foisted upon it thereby is not correspondingly on the increase. The DGA urges the Commission to expose this issue to the light of day through public hearings.

Contrary to the position taken in Mr. McKinney's November 4, 1986 letter, Lexiconning does not simply constitute an editing process. With Lexiconning, there is a much subtler sleight-of-hand taking place without the viewer's foreknowledge, and unlike the prestidigitations of a magician, the trickery is not for the pleasure or benefit of the audience.

This process must not remain the secret of television broadcasters. The broad expanse of television viewers in this country -- who ultimately constitute the source of broadcasters' massive revenues -- ought to be informed through the medium of public hearings. No matter what recommendations for legislative or regulatory action would be generated by such deliberations -- and the DGA would advocate stringent restrictions on Lexicon use -- the public would greatly benefit from a full airing of this issue.

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The DGA therefore again urges the Commission to grant Mr. Pevsner's petition for reconsideration and hold public hearings on the proposed regulation of Lexicon technology.

Very truly yours,

TAYLOR, ROTH, BUSH & GEFFNER
A Law Corporation

Ira L. Gottlieb

IRA L. GOTTLIEB

ILG/dm

dga tricar.dm

cc: Glenn J. Gumpel, National Executive Director, DGA
Elliot Silverstein
Donald Pevsner, Esq. ✓

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INSIDE TODAY'S HERALD

■ Time compression. TV broadcasters are showing incredible contempt for the nation's viewers. 4C.

Viewpoint

Sunday, March 20, 1988 The Miami Herald Section C

Time compression deceives unsuspecting TV viewers

By DONALD L. PEVSNER

U.S. television broadcasters are showing incredible contempt for the nation's viewers.

Feature films have always been one of the few good reasons for watching commercial television. True, they are interrupted by commercials, but that has been the price to watch a movie without paying for it. However, commercial clutter has increased until now there is a very real problem with showing the average-length feature film and the commercials in a standard two-hour time slot.

Logic and fairness dictate that, if a broadcaster wants to show a movie that is too long (with commercials) for a given slot, he must extend the slot to accommodate the film. But unscrupulous TV executives can see no farther than the almighty dollar. So they usually do one of two things:

● First, they will edit films with a tcher's knife until they fit an arbitrary e slot. Occasionally the networks will ..ake an "edited for television" announcement that discloses such callous slavery to time. But I have yet to see independent TV stations — and they show the vast proportion of movies on commercial TV — tell the truth about editing "up front," for viewers who prize movies as their directors made them.

● The second practice — one not known to be found anywhere else in the world — is highly secret, and I discovered it purely by accident, when a studio engineer talked. It's called "time compression." The Lexicon Corp. in Waltham, Mass., invented an amazing little gadget that can speed up movies without distorting the voice pitch. Though the on-screen images move faster, the actors' voices don't sound like Alvin and the Chipmunks.

The Lexicon Audio Time Compressor lets greedy TV broadcast executives cram an extra 12 minutes of commercials into a two-hour time slot by simply speeding up the movie by a factor of 10 percent. Careful studies showed that a 10 percent speed-up is just slow enough to avoid detection by unsuspecting viewers. Any faster and it would be obvious that something was truly rotten in TV-land.

The government isn't supposed to let this happen, right? It grants broadcasters their licenses on the condition they serve the public interest. After all, in 1974, a unanimous Federal Communications Commission (FCC), under a business-oriented Republican administration, banned the very analogous practice of subliminal advertising.

In subliminal advertising, a message is flashed on the TV screen for too short a duration to be consciously spotted by a viewer. Instead, it goes into the viewer's subconscious mind, to pop out later in the supermarket or elsewhere. Said the FCC: "Whether effective or not, such broadcasts clearly are intended to be deceptive ... and are contrary to the public interest."

This FCC language is tailor-made for the time-compression situation. On July 29, 1986, I filed a formal rulemaking petition with the FCC that sought two avenues of relief, in order of preference:

(1) After public hearings, issue a final rule banning the use of time-compression devices by all U.S. television broadcasters as contrary to the public interest and inherently deceptive, or

(2) Mandate that a TV broadcaster superimpose an easily recognizable symbol in a corner of the screen, to alert viewers at all times that a time compressor is being used. I suggested a cartoon of a speeding pig, smirking nastily while rapidly cranking a money machine.

The Directors Guild of America (DGA), widely known for its reasoned attacks on "colorization" of black-and-white films, filed strongly supportive comments. A sample: "The Guild ... stands staunchly opposed to any technological change which threatens to alter a fully-conceived

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work of art by distorting it into a vehicle for selling more commercial time. The FCC should call a public hearing and adopt regulations that will protect the public from the silent mendacity and adverse physical effects of time compression."

The frenetic action on screen can create a feeling of real tension in the uninformed viewer — who will never ask why.

Yet in November 1986, former FCC Mass Media Bureau Chief James C. McKinney, following the philosophy of arch-conservative former FCC Chairman Mark Fowler, dismissed my petition in a short letter. His action underscores FCC behavior during the Reagan administration — allowing big business to do anything it wants at the expense of the viewer. McKinney refused to draw the analogy to subliminal advertising and refused to call a public hearing. And the current FCC chairman, Dennis Patrick, has taken no action on my 16-month-old petition for reconsideration, also strongly supported by the DGA.

The nation's media have largely ignored the time-compression deception. A notable exception was the commendable broadcast of *The CBS Evening News* last June 26. But the overall apathy in the mass media to the scandalous breach of ethics inherent in time compression — and it should be noted that some of the print media own television stations, too — is at least as outrageous as the practice itself.

What can you do to stop time compression?

- First, you can contact two congressional subcommittees that are holding hearings on various movie adulteration practices, including time compression: the Senate subcommittee on patents, copyrights and trademarks, chaired by Sen. Dennis DeConcini, D-Ariz., and the House subcommittee on courts, civil liberties and the administration of justice, chaired by Rep. Robert Kastenmeier, D-Wis.

Congress can exercise considerable clout over a regulatory agency like the FCC, as well as make new laws that need making. And in an election year, committee members will be hard-pressed to permit the motion-picture industry and the broadcast lobby to triumph over a deluge of letters from outraged constituents. Your own congressman and senators should also be contacted. (U.S. Senate, Washington, D.C. 20510; U.S. House of Representatives, Washington, D.C. 20515)

- Second, you can demand that the FCC hold public hearings for the purpose of responsibly regulating the practice of time compression. (Dennis Patrick, Chairman, FCC, Washington, D.C. 20544)

It's up to you to help stamp out

Logic and fairness dictate that, if a broadcaster wants to show a movie that is too long (with commercials) for a given slot, he must extend the slot to accommodate the film.

Donald L. Pevsner is a Miami attorney and consumer advocate whose column, "Travel Wise," appears in The Herald's Travel section. He wrote this article for The Herald.

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INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA,
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OFFICE OF THE PRESIDENT

August 31, 1988

OFFICE OF REGISTER OF COPYRIGHT
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Comment Letter
RM 88 3
No. 13

LIBRARY OF CONGRESS
Department 100
Washington, D. C. 20540

Dear Sir:

We are addressing your request for written statements in regard to whether and how new technologies such as colorization, time compression and panning and scanning affect motion pictures and television programming and those involved in the production thereof.

We do not feel competent to comment on the actual technical technology, nor do we deem it necessary, and limit our views to the following areas noted in your Request for Information:

A. The International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada (the "IATSE"), which represents 65,000 employees and other personnel engaged in the production, distribution and exhibition of motion picture, television and video programming, does not object to the use of these technologies.

B. The development and growth of the colorization technology has, indeed, increased employment for the industry in general and the IATSE represents approximately one hundred and thirty employees involved in the colorization production process at Color Systems Technology, Inc. with whom we have a collective bargaining agreement. Any legislation or regulation which would ban or limit such production would materially affect the economic livelihood of these employees.

C. The introduction of these new technologies increases production and employment, and this has generally been the result in the motion picture and television industries as they have experienced

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innovation over the years -- ranging from the introduction of sound to color photography to stereophonic sound and to advanced visual and special effects.

It is well known that color cameras and color film were "rationed" in the early days of color photography, and that, even when color photography and film became somewhat more available, the studios continued to shoot in black-and-white until the use of color cameras and film became truly economical.

D. We also believe, based on what has been reported to us, that the public has expressed a preference for viewing films in color, as distinguished from black-and-white, whether in the theatres, on television, or on home video.

The IATSE represents theatre projectionists working in motion picture theatres where, we believe, there is little, (if any) demand today for exhibition of the older black-and-white pictures.

E. Collective bargaining agreements and individual personal service agreements in the motion picture and television industries cover a wide variety of subjects, including artistic rights, and we firmly believe that the collective and individual bargaining arenas are the proper forums for parties to attempt to achieve additional rights where they themselves are not the copyright owners of the program.

F. In this connection, we strongly refute the statements made by film directors and/or screen writers that they are the primary creative personnel involved in motion picture and television production. As has been repeatedly said, motion picture and television production is definitely a collaborative enterprise involving many, many other artists, artisans and craftsmen, many of whom are members of the IATSE.

The attached "Daily Variety" letter to the editor, from a member of our Local 659, states this position most eloquently, in addressing certain elitist positions expressed by screenplay writers.

In sum, we believe that this new technology provides additional employment, the colorized videotape does not in any way destroy the original black-and-white negative or film (which is still available for viewing), and there is no need for legislation to outlaw or limit the creation and exhibition of colorized versions of motion picture and television programs.

Very truly yours,

Alfred W. Di Tolla

INTERNATIONAL PRESIDENT

AWD:dr
Enc.

LETTERS TO THE EDITOR

WGA Vs. AMPTP

Editor, *Daily Variety:*

Re: Letter to the Editor from writer Charles Pogue (*Daily Variety*, July 27).

Talk about rubbing our noses in it. Of course we know the importance of the screenplay writer in our business. There is not one actor, director, producer, or technician who hasn't experienced the excitement of having a scene come to life before their eyes.

We've also cringed when a script that read well just didn't sound right when it was finally time to be acted before the camera. However, to state that the writers are the *only* creating entity on a film is to disregard the input of so many talented individuals.

Photography, music composition, architecture, painting, clothing design, choreography and others are considered creative arts in their own right.

The fact that those involved in making films have chosen to focus their energies towards a common goal (collaboration) doesn't make their contributions any less valid. The writer's role in the process is vital to be sure. But none of our work stands alone.

You're correct Mr. Pogue, they *do* call it a Frank Lloyd Wright *house*. And if the "guys who put it together" hadn't been there, we'd be calling them Frank Lloyd Wright blueprints.

I trust he had more respect for his builders than Mr. Pogue does for us. What if Mr. Wright had been a set designer? Would that have made him any less creative, an interpreter?

How many Americans have huddled in a darkened theater and enjoyed reading a screenplay by the light of an empty white screen? I say, if the writer has a need to be recognized for his sole efforts, then he/she should write novels etc., where the written work is the end product and can be appreciated as such. If that's not enough, and you've got the skills, finance, produce and direct your own scripts. Otherwise, join the team. Good luck.

Jonathan West
Director of Photography
Member, International
Photographers Guild,
Local 659 IATSE
Chatsworth, Calif.

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Comment Letter
RM 88-8
No. 14

Testimony of George Stevens, Jr.

U.S. Copyright Hearings on

The Impact of New Technology on Motion Pictures and Television

September 8, 1988

We meet here to consider the perpetuation of American culture. Our concern is with the evidence of our times that we humans leave behind that characterizes our civilization -- as has been the practice of mankind since men scratched primitive drawings on the cave walls of Altamira. We despair when great cities are obliterated by uncontrollable acts of war or by acts of God or by neglect. We should despair also when a nation allows the degradation or distortion of the artifacts of its culture.

Since we are talking about continuity I would like to begin my testimony by recalling the time when my awareness was awakened to the question of the lasting quality of works of art.

It was in an automobile driving home from the 1952 Academy Awards in Los Angeles. The driver was my father whose film A Place in The Sun had been honored that night with many awards, including his for Best Director. The Oscar was on the seat between us and I was seventeen years old and quite excited, perhaps too excited in my father's eyes. He turned to me and said, "You know, we'll have a better idea of how good a film this is in about twenty-five years."

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Ever since that night thirty-five years ago I have believed in the "test of time" as the ultimate measure of a motion picture's worth. That belief caused me to become passionate about the importance of preserving films as record of our culture and as inspiration and entertainment for future generations.

I speak to you today as a filmmaker and as a member of the Directors Guild of America, the Writers Guild of America and as the Founder of the American Film Institute. Yet the views I express are my own, not necessarily those of the institutions with which I am associated.

I believe, simply, that we have a responsibility as citizens of a great nation to preserve the records of our time and to insure that our motion picture classics continue to exist and to be shown in the form that their creators devised for them -- and only in that form.

I know that this belief flies in the face of the intentions of some of the managers of the corporate interests that produced or that have acquired distribution rights to these films. This is not surprising when you consider that a generation ago many of the companies that produced these classics, chose to melt down the original negatives so as to rescue the silver nitrate content which they calculated to be more valuable than the films themselves.

It is a sad fact of the moviemaking system - which is a

shotgun wedding between art and commerce - that the men who have controlled the purse strings of this industry were, with very few exceptions, so concerned with profits that they neglected their responsibility to the art and culture contained within the "property" they managed. It is this tradition of shortsightedness from which we seek to protect our culture and the American public.

We may be fortunate that many of today's leaders at the motion picture companies are young executives who studied and appreciate the history of American moviemaking. I believe they may be persuaded by reasonable argument and self interest to guard their heritage rather than to distort it for relatively small gains.

I think we all agree that an enlightened nation protects its history and its culture, so we find ourselves here today considering <u>how</u> to save America's motion picture and television heritage from the ravages of colorization, panning and scanning and the truncating of films for broadcast on television or cable. This is a subject of special concern to those of us who have over the past two decades fought, sometimes against the neglect and disinterest of the copyright owners themselves, to preserve America's film heritage. Those of us involved in this campaign did it not for financial gain but in the interest of history and of our children and our children's children who for whom we wish to insure the opportunity to enjoy these preserved films in the

future -- if they are not mutilated so as to prevent them from being seen as they were conceived by their makers.

I confess that my concern is for what I regard to be the "classics" or the "great" films. However, that is a matter of my taste as distinct from someone else's. It is the principle of archival preservation that as much as can be preserved is preserved, so as to provide viewers of the future the opportunity to select.

The United States of America spawned a new art form in this century and brought forth a filmmaking tradition consisting of great filmmakers and great films unmatched by any nation. This era is known the world over as the Golden Age of Movies and encompasses the work of artists like D.W. Griffith, Charlie Chaplin, Harold Lloyd, Buster Keaton, John Ford, Orson Welles, William Wyler, John Huston, Frank Capra, Billy Wilder, Alfred Hitchcock and George Stevens.

The cumulative work of those men, and others of lesser reputation, may prove to be the most vivid and unique visual, social and artistic record of any nation in the history of mankind. How foolish we will seem if we allow this legacy to be colored, panned and scanned and truncated so that future generations will not see these works in the form they were conceived. I believe that the reason the work of these men is valued today, half a century after it was created, is because they were the strong and the talented ones who fought for and had

the authority to make their films in their own vision. So it is important that their vision be the one that is preserved and the one that is seen, not the vision, or the absence of vision of the hired technicians who are engaged to coat these films with color, or to alter every single frame by panning and scanning, or to delete scenes to enable the films to be sandwiched in between commercials and to fit an arbitrary time period. No nation with any sense of history or sense of artistic tradition would allow that.

We as a nation have chosen to dedicate the remarkable invention of television to be an advertising medium. It can be argued that our system is a good one, in principle. But is it right that all art and creativity in films should be subordinated to the desires of the advertisers who run broadcasting and their practice of fostering the unchecked distortion of our finest films? Is this consistent with their obligation to use the airwaves "in the public interest, convenience and necessity"?

I hope the answer is no.

As a great democracy we must have within our powers the capacity to devise the means to balance the economic appetites of the copyright holders and broadcasters with the public interest.

o We must find a way to protect the black and white films of Griffith, Chaplin, Lloyd, Keaton, Ford, Welles, Wyler, Huston, Capra, Wilder, Hitchcock and

Stevens from being colorized by technicians. These great filmmakers designed these films with acute visual sensitivity to the shadings and textures of black and white photography. Those that claim otherwise are simply ignorant of the creative process.

o <u>There is an alternative to panning and scanning.</u> The so-called "letterbox" technique enables films to be presented in their <u>true</u> aspect ratio on television without the distortion of each frame by "panning and scanning". Audiences will, particularly as the resolution of television sets improves, quickly adjust to the dark spaces at the top and bottom of the screen and appreciate the preferred experience of seeing the scenes as they were composed by the director and the cameraman. This practice, already popular in Europe and Japan and insisted upon by Woody Allen for his films, should be adopted in the United States.

o <u>The public deserves a limitation on the amount of commercials that may be inserted into a movie on television.</u> In the time that I have been producing programs for television I have seen the amount of commercial time in a network hour increase from six minutes to fourteen minutes. In the name of deregulation we allow the unchecked commer- cialization and cluttering of television (news breaks, sports

breaks, station breaks, promotions of upcoming shows and commercials) without regard for the interest and viewing pleasure of the American public. The amount of clutter is even greater on off-network tele- vision. As long as we permit broadcasters to think of motion pictures as sausages that can be cut up and parts thrown away so as to make them fit between an expanding amount of commercial material, we will be showing a lack of respect for our public and our film heritage.

Some people, particularly the colorizers, like to say that these filmmakers would have made their films in color if they could have afforded it. In the vast majority of cases that is simply untrue, and in those cases where it might have been true, the filmmakers would have applied their own distinct sense of cinema to the choice of costumes, make-up, sets and, most importantly, the design of the photography. Their vision is but one quality that distinguishes them from the technicians who hire out to colorize their work. John Huston and Frank Capra and Billy Wilder lived long enough to observe the insult of colorization (or the "impudence" as Mr. Huston called it) and to denounce the technicians who distort their work.

I knew most of the other filmmakers named herein and I can assure you that there would be storms in the heavens if these bastardized versions of their work were screened in the great projection room in the sky.

One of these men declared himself on these matters before passing on. I located a transcript of a press conference that George Stevens, Sr. held on October 26, 1965 at the time he sued Paramount Pictures and the National Broadcasting Company in the Los Angeles Superior Court charging them with violation of his contractual rights that assured that his film, A Place In The Sun, not be cut, edited or altered in any way without his express consent. He referred to this alteration of his film as a "matter of conscience" and "a matter of responsibility".

> "Certainly a film, and the audience's relationship to the film, is a consciously designed train of thought. I am concerned with my responsibility to my work and to the individual's right, as an audience, to be treated as a thinking, responsive mind and not just as a device to be moved by the extraordinary skillful figures in the commercials. Insertion of some thirty-five skillfully conceived commercial "skits" into my film, A Place In The Sun, leaves the film hopelessly disjointed, leading to a complete dislocation of the film from its purpose - - its purpose being to have an association with its audience and a continuity from beginning to end. The film becomes just a device thrown in to attempt to hold their interest.

> We hope that through this [lawsuit] and other efforts of its kind we can do something to let there remain a conscience at work in film and a responsibility to the audience. And from where I sit and what I see, I don't think the great television broadcasting people acknowledge that or care about it."

That was a plea from a man who devoted his life to making films and providing enlightenment and entertainment of quality and moral value to the American people. So I raise his voice once again today, in concert with my own, to urge that we as a proud nation begin a process to safeguard our great motion pictures and to protect the interests of the American people.

The words of President Kennedy that are carved into the walls of our national cultural center express our responsibility with eloquence:

> "I look forward to an America which will not be afraid of grace and beauty. I look forward to an America which commands respect throughout the world not only for its strength, but for its civilization as well. And I am certain that after the dust of the centuries has passed over our cities, we, too, will be remembered not for victories or

defeats in battle or in politics, but for our contribution to the human spirit."

Let us find the means to safeguard our contributions to the human spirit.

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Comment Letter
RM 88-3
No. 15

In the Matter of	)	
	)	Docket RM 88-3
Request for Information;	)	
New Technology and	)	
Audiovisual Works	)	

These written comments are filed in response to the above-referenced Request for Information published on May 25, 1988, 53 FR 18937, on behalf of National Broadcasting Company, Inc. (NBC). NBC owns and operates a national commercial television network with over 200 affiliated television stations nationwide, including NBC's seven owned VHF television stations. NBC, directly or through subsidiaries, also produces network and local television and cable television programs, as well as theatrical films.

NBC, as both a broadcaster and creator/copyright holder of programming, is familiar with the issues raised by the new technologies and their impact upon audiovisual works and has a direct stake in the outcome of this proceeding. We believe the needs and concerns of creative individuals, copyright owners and broadcasters of

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audiovisual works, must be balanced in a manner that will allow the creative process to continue and be encouraged both through the wide dissemination of existing works and the funding of new programming.

The commercial television broadcast of audiovisual works originally created for another medium, such as theatrical exhibition, has traditionally required that the work be edited. For example, because 35 mm. film has a much wider aspect ratio than televison screens, theatrical film must be electronically narrowed for television exhibition, or it will appear as a ribbon in the middle of the television screen bounded by black borders running horizontally above and below the picture at the top and botton of the screen. This process is known as panning and scanning. Without such editing, the television exhibition of 35 mm. film is unattractive to most viewers. It is important to recognize that these techniques have been utilized from the earliest days of television, in large part because they are dictated by the demands of the medium.

Editing is required to allow advertising and other noncommercial, nonprogram material, such as station identification and public service announcements, to be inserted, to fit the audiovisual work into the allotted program time slot, and to accommodate the difference in size and proportion between traditional movie theatre and

television screens. Additional constraints are imposed by community standards. For example, the networks have traditionally deleted certain portions of works thought to be too violent, sexually explicit or obscene for unrestricted broadcast into the homes of families. Indeed, the avoidance of excessive violence and indecency on television has long been a concern of federal judicial, legislative and regulatory bodies. See FCC v. Pacifica Foundation, 438 U.S. 726 (1978); New Indecency Enforcement Standards to be Applied to All Broadcast and Amateur Radio Licensees, Public Notice, 62 R.R. 2d 1218 (1987), aff'd in relevant part, sub nom. Action for Children's Television v. FCC, No. 88-1064, (D.C. Cir. decided July 29, 1988); also see Notice of Apparent Liability, Kansas City Television, Ltd. (June 23, 1988) (licensee fined $2,000 for failing to sufficiently edit theatrical film "Private Lessions" for 8 p.m. broadcast); proceeding stayed on other grounds, FCC 88-274 (August 5, 1988).

Moreover, even under the regulatory constraints described above, NBC's and other broadcasters' goal has always been to keep the editing to the minimum necessary, and considering the thousands of motion pictures broadcast on television each year, the relatively few complaints about editing made by creators or the viewing public pale to insignificance. There simply is no substantive problem to be remedied.

Moreover, in the long run, the effect of legislatively-imposed editing restrictions could be to limit or deny to the viewing public of free, over-the-air television--our nation's widest-circulation video distribution medium--access to a portion of our great American motion picture heritage. That is, being subject to the technical constraints of the medium (e.g., different aspect ratio) and conflicting sets of regulations (e.g., FCC policies on "indecent" material and proposed rights of creators to object to excision) could result in broadcasters simply electing not to air such theatrical films.

Moreover, assuming arguendo that legislation were warranted by some aspects of the emerging technologies, its implementation would be complicated by the fact that there is not any one particular person or entity to which it is appropriate to impute creative control and the resulting financial power. Audiovisual works are by their very nature extremely collaborative ventures. Each work involves the services of many, many individuals, from the producers who assemble the financing and often select the major creative personnel and coordinates their activities, to the screen writers who script the work, to the actors who perform, to the cinematographers who photograph and record the sound for the work, to the editors who compile the footage, and, of course, to the directors who direct

these various activities. Thus, many different individuals have different interests and concerns with the final product and the form in which it is viewed by the public.

The producer typically has the greatest financial stake and endeavors maximum exploitation. But, often others share in the profits generated. The recent Screen Writers Guild strike, which focused on what portion of profits from foreign residuals would go to the writers, highlights the fact that various different financial and artistic participants in the creation of an audiovisual work may also have a contractual interest in its maximum exploitation.

It must be kept in mind that due to the collaborative nature of the process, each of these individuals, from the outset of the creative process, knowingly surrenders control over the final product. The degree of control to be retained, if any, is a negotiated contractual matter.

Thus, it would be extremely difficult to decide by governmental edict which of the many individuals involved in creating a particular work should retain what has been called the "moral right" in an audiovisual work. Awarding such authority to one party would affect not only the individual selected but also all others with either an artistic or financial interest in the work. Perhaps the

most typical example of the nature of the production process is the disgruntled motion picture actor who believes his or her finest scenes have ended up on the cutting room floor instead of in the picture as released. No one would suggest that the law should give him or her creative control to prevent that, for the same practical and financial considerations as apply to editing the same scenes for television. Moreover, if the director could veto any change in the work that the broadcaster believed necessary to exhibit the work, the director might in fact be denying revenue to other profit participants such as the producer, actors or writers involved.

Recognition of the collaborative process described above was a basis for the express inclusion of audiovisual works among the works that can be "works for hire" under the U.S. Copyright Law. Under the doctrine, the party who commissions the work is the owner of all rights in the work, subject to any contractual restrictions to the contrary. We believe that, through contractual negotiations and union agreements, most of the concerns of the various creative entities that advocate "moral rights" legislation are already adequately addressed in our system. Thus, an actor or a director concerned with future exploitation that would involve editing can, by contract, require his or her approval of any agreement disposing of broadcast rights.

Besides the exceptionally collaborative nature of audiovisual works, there is another important distinction between such works and other forms of art, such as original paintings. The editorial changes made to an audiovisual work for broadcast are not a threat to the integrity of the original work, which generally continues to exist in its original form on the master tape or negative. Changes are usually made only to duplicate copies so that the original continues to subsist and, depending upon the arrangements made by the owner of copyright in the original, will often continue to be available to the public either in the form of video cassettes or through theatrical re-release. This greatly weakens the argument in favor of the creation of "moral rights" legislation aimed at special protection for audiovisual works, as no permanent damage need be done to the original.

It has also been suggested that the name of any person dissatisfied with the ultimate edited product be entitled to have his or her name deleted from the credits for the work. (That right can, of course, also be the subject of contractual negotiation.) Such a solution, however superficially simple it may appear, may be subject to certain pitfalls. Years after a film is completed, it may be difficult, if not impossible, to trace the screen writers, cinematographers, directors and other creative people involved in a film. It also would be commercially unrealistic to require a broadcaster at that time to obtain

various approvals for editing changes prior to broadcast. And a broadcaster, on the eve of a broadcast, faced with a lawsuit by a disgruntled screen writer, for example, demanding his name be removed from the credits, in many instances would not be able at that late time to make the requested deletion and would simply fail to broadcast the film altogether, or risk substantial legal liability.

We do not believe that legislative restrictions are appropriate in an industry bound by decades of contractual (personal and union) relationships. Moreover, this industry is by its very nature a "high tech" industry. This industry has been affected by technological change throughout its history, and those contractual relationships have proven adaptable to such change.

While we do not believe that any protection is warranted at all, we note the approach taken in HR 4867, the Fiscal Year 1989 Interior Appropriations Bill, including provisions establishing the National Film Registory and National Film Preservation Broad within the Library of Congress. This legislation contains a notification requirement when a "material alteration" is made in the copy of a film to be broadcast. For example, a colorized version of a black and white film must indicate that it is a colorized version. But, there are two significant limitations on this requirement. First, the statute itself recognizes the technological and other

constraints posed by the transfer of theatrical film to television exhibition and explicitly excludes from the definition of material alternation "changes made in accordance with customary practices and standards and necessary requirements of preparation of a work for distribution or broadcast." Cong. Rec. H 7246, September 8, 1988. Senator DeConcini stated:

> By inclusion of this language excepting these normal practices, the conferees intended to grandfather-in the standard procedures used to prepare a film for broadcast, television videocassette sale and cable viewing. For example, practices such as panning and scanning, time compression, time expansion, and customary editing to meet time formats are common in the preparation of films for broadcast television, videocassette sale and rental and cable viewing. These practices, as well as editing designed to remove materials that the broadcaster is concerned may offend community sensibilities such as nudity, profane language, and inappropriate and excessive violence are not intended to be "material alterations" under this definition.

Cong. Rec. E 2885, September 9, 1988. Second, these provisions of HR 4867 are to sunset after three years.

Moreover, as Senator DeConcini pointed out in his statement on the Conference Report, "since the owners of the colorized films are perfectly willing, if not eager to publicize the fact that these films are colorized, then this requirement is rather superfluous." Ibid. Indeed, the networks now generally indicate if a particular film has been "edited for television," and such notices would follow in that tradition. If there is to be any

legislation, at most it should require only that appropriate notification of substantial changes be given in some similarly brief notice.

For the foregoing reasons, we believe that the existing industry practices and contractual protections strike the appropriate balance in protecting the creators of audiovisual works warranted without unduly impeding the creation, financing and distribution of such works in the electronic media.

Respectfully submitted,

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September 22, 1988
05211

EXHIBITS



BUDDY YOUNG

Buddy Young spent 25 years as a motion picture advertising, publicity and marketing executive before joining Color Systems Technology, Inc. as its President at the company's inception in 1983. Prior to that, Young was full partner in Powell & Young, a motion picture consultancy firm. During that time, the firm represented some of the film industry's top film-makers and top motion pictures, "Annie" and Rocky III" among the latter.

A native-born New Yorker, Young entered the film industry as an apprentice publicist with United Artists.

He moved to the West Coast for that company in 1965, heading UA's West Coast advertising and publicity office. In 1975 he joined Columbia Pictures and, with his longtime associate Charles Powell, ran the marketing operations of that studio.

From 1976 through the end of 1979 he was Vice President of marketing at MCA/Universal Pictures, developing and supervising campaigns for such pictures as "Jaws" and "The Deer Hunter."

Young is a longtime active member of The Academy of Motion Picture Arts and Sciences and serves on several industry-wide committees.

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COLOR SYSTEMS TECHNOLOGY INC.

B

CHARLES M. POWELL

Charles M. Powell brings more than 25 years of motion picture experience to his current position of Executive Vice President and Secretary of Color Systems Technology. Previously, Powell was Partner and Chairman of the Board of Powell & Young, a motion picture consultancy firm which merged in 1983 with Color Systems Technology.

He has held senior marketing positions with three major film studios: Metro-Goldwyn-Mayer, Columbia Pictures, and MCA/Universal Pictures.

From 1976 through 1979 he was Senior Vice President for Advertising/Publicity/Promotion for Universal Pictures, marketing such films as "The Dear Hunter," "Jaws 2," "Animal House," and "Smokey and the Bandit."

As Columbia Pictures' Senior Vice President-Marketing he launched "Funny Lady," "Shampoo," and many others. He previously served as Senior Vice President for film marketing at Metro-Goldwyn-Mayer.

Prior to that he was assistant to filmmaker M.J. Frankovich; National Publicity Manager and National Exploitation Manager of Columbia Pictures in New York; and National Advertising/Publicity Coordinator of Paramount Pictures in New York.

Powell & Young were involved with the marketing of many major motion pictures including "Annie," and "Rocky III."

Powell is currently serving thirteenth year as Governor of the Academy of Motion Pictures Arts and Sciences and is also Vice President of that organization. He is a graduate of New York University's School of Journalism and a frequent lecturer at USC, UCLA, NYU, and Yale.

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COLOR SYSTEMS TECHNOLOGY Inc.

JOSEPH A. ADELMAN

Joseph A. Adelman has devoted over 25 years of his professional career to the areas of motion picture production, financing and distribution. Senior Vice President of Color Systems Technology and also President of CST Entertainment since 1986, its distribution division, Adelman previously served as Vice President in Charge of Business Affairs for both Paramount Pictures Corporation and United Artists Corporation. He worked closely with the senior executives of these major studios in negotiating and administering the business, legal, financial, and other production and distribution arrangements with producers, directors, actors, writers and other talent.

Adelman has also served (1977-1979) as Executive Vice President of the Association of Motion Picture and Television Producers (predecessor to the current Alliance of Motion Picture and Television Producers), where he represented the management of Hollywood's film and television studios in labor negotiations and labor relations with the industry's guilds and unions. A member of the Executives Branch of the Academy of Motion Picture Arts and Sciences, Adelman also formed his own companies, Kidpix Inc. (in 1984) and Kidpix Theatres Corporation (in 1985), which specialized in the production, distribution and exhibition of children's programming. His activities for these companies as well as his position at CST Entertainment has involved him in the worldwide television and home video marketplaces.

A graduate of Harvard Law School, Adelman is a member of the bar of both New York and California. In 1982 he was awarded the Alumni Achievement Award by New York University's College of Arts and Sciences.

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COLOR SYSTEMS TECHNOLOGY Inc.

DAVID J. LEEDY

David Leedy, Senior Vice President and Chief Financial Officer of Color Systems Technology, completed his studies at the University of Utah in Salt Lake City in December, 1962 and commenced employment in January, 1963 with Haskin & Sells in Los Angeles, where he obtained his CPA.

After four and one-half years with Haskins and Sells, Mr. Leedy entered private industry. From 1968 until 1975, he held various positions in the real estate and oil industries, including controller of McCulloch Oil and their subsidiary, McCulloch Properties.

In 1975, Mr. Leedy was employed by MCA, Inc. as Controller of their Universal Pictures Division. He was there during the release of JAWS, SMOKEY AND THE BANDIT, and ANIMAL HOUSE. Utilizing the knowledge gained at Universal, Mr. Leedy formed his own consulting firm in 1980. In that connection, he self-published a booklet "Motion Picture Distribution - An Accountant's Perspective" describing the so-called "Hollywood Accounting" used in the motion picture industry. That booklet received acclaim throughout the industry and was used by colleges and universities from New York to California. Mr. Leedy is recognized as one of the experts in this area and frequently guest lectures on the subject, including the American Film Institute and the UCLA Graduate School of Business.

Mr. Leedy has been involved with Color Systems Technology, Inc. since 1981 in the capacity of consultant. He joined Color Systems in October, 1984 and was named Chief Financial Officer in May, 1985.

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THE COLOR CONVERSION PROCESS

The concept of coloring black-and-white material is not original. In the late 1890's, Thomas Edison had established an assembly line to hand paint black-and-white film. In 1917 different strains of film, one for reds, one for blue-greens were used to produce color by bonding them together. During the 1920's, alternative systems were developed. These included tinting and dyeing the black-and-white film, and toning which colored only the grays and shadows.

With the advent of sound, color experimentation dimensioned because color dyeing interfered with the sound track. A few years later Kodak developed new dyes which were used until 1949. All of these attempts were to color-convert black-and-white film. At Color Systems Technology, we are color converting video tape.

The color conversion process is made up of six major steps. The first step is making a new print of the original film and transferring this to video tape. This is done on a scene-by-scene basis so that we can provide the best quality picture available on video tape for the coloring process. The next step involves our Continuity Department. Here our Specialist identifies each individual shot in the motion picture. The typical full-length motion picture is made up of from 800 to 1400 unique shots. Each one is cataloged individually.

The next steps involve the Art Director and Research staff. The Art Director will establish the overall look and color selection for the entire picture. Using information obtained by the Researchers, they will establish specific colors for flesh, hair, and eyes of key characters while providing a general look for each set and location within the film.

As we are doing this process, we keep in mind that we are creating a new form of entertainment. One that is not to be seen in an old movie palace on a fifty-foot screen, but in the living room on a twenty-inch television. Therefore we accommodate these different needs.

The next step is to create a storyboard. This is a visual presentation of key shots within the film utilizing the direction and guidance of the Art Director to establish the overall look for the entire movie. After approval of the storyboard, the bulk of the coloring work begins.

Each individual shot in the movie is now colored. A number of keyframes will be selected from the shot to establish the position for masks which defines areas of the picture, and applying color sets to those areas which will include many hues and tones. Within these areas maybe multiple objects. The masks are available and can be created on five different planes. This allows us the ability to blend and mix colors much the same as an artist would with paints. When mask areas overlap each other, the colors are added together giving us an infinite tonal palate.

Our Colorists are able to achieve these difficult goals because of their wide backgrounds in the areas of graphic arts, fine arts, cinematography, photography, and other artistic disciplines that are very useful to them on a day-to-day basis in their jobs.

For consistency sake, shots are not colored in the order they appear in the film, rather they are grouped by location and character the same way it was originally shot on film. Therefore, at this point our Editor takes over. His task is to make sure that the original order is maintained as each individual shot is recorded into the final product. During this process, he will also balance the color from scene-to-scene assuring a smooth transition from one cut to the next. After approval of this final reel, by our Art Director, our client, and our internal staff, the product is complete. We now have a new color-version of the film.

CST TECHNOLOGY

HISTORY. The technical foundation of CST's coloring process emerged from developmental work done in the 1970's. An experimental coloring system developed during that period was used to successfully color 30 minutes of black and white materials that were aired in 1978 by a major television network.

The technology used to color those first scenes is based on a coloring method that exploits the intrinsic gray scale information of the black and white picture to 1) automatically segment picture regions to receive particular colors groups and 2) vary the hue and saturation of color within regions to create naturally appearing colors. Those techniques are the basis of a CST owned patent for color conversion and they have been incorporated into the design philosophy of all CST coloring systems built to date.

The first experimental coloring system consisted of extensive special purpose analog circuitry for video signal processing, custom built optical image filtering equipment, and commercially available broadcast video equipment. This first system employed no digital computers.

Development of the first CST coloring system designed for a full time production application began in 1984. That system enhanced the original analog and optical signal processing methodologies with the addition of several microcomputers to accomplish system control, data management, and computer graphics functions. In 1985, the system became operational in a full time production environment. Subsequently, eighteen copies of that system were constructed and deployed into CST's modern 24-hour, 7-day/week production facility.

Development of a second version of the production coloring system began in 1986. Emphasis on the second system's design was increased productivity which was accomplished through use of state-of-the-art computer graphics equipment altered to meet the technical demands of coloring. With the new equip-ment, productivity increasing features such as real-time picture feedback and real-time recording became available. To minimize the costs of converting older coloring systems to have these real-time features, the real-time coloring system was designed to utilize much of the first version's existing equipment.

Four copies of the second version system (called the Real-Time Coloring System) were constructed in late 1987 and today, they are in full production. Unlike earlier systems, the four new real-time systems are linked by a high-speed communications network with which they access a common data base of information essential for coloring. In the their initial months of operation, these systems demonstrated a doubling in productivity measured against the productivity of older systems and are expected to continue that same trend in the months to come.

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Development of both production versions of the CST coloring systems required an investment in development of over 35 man-years of highly skilled engineers and computer scientists.

COLORING TECHNOLOGY. Coloring black and white movies requires continuous use of people's visual perception, artistic, and decision making skills--skills that cannot be automated even with today's most advanced technologies. Therefore, the technologies CST has chosen to incorporate into the design of our coloring systems are those that help people effectively use their skills in the coloring process. The simple, repetitive, and well characterized tasks have been relegated to the coloring system.

The synergistic blend of technologies incorporated into Color System's Real-Time Coloring System include state-of-the-art computer equipment, CST's proprietary/patented coloring hardware, and broadcast-quality video systems. A CST real-time coloring system has six components: 1) colorist console, 2) host computer, 3) computer graphics system, 4) video system, 5) color adder, and 6) diffusion system. A brief description of each component follows.

Colorist's Console. The colorist controls the coloring system from a console. The console consists of several video monitors that display black and white and color pictures, 2-D filled polygons, menus, and text. Commands to the system are issued by a colorist using a mouse, keypad, and keyboard connected to an Apple Macintosh Microcomputer. The proprietary console software was developed by CST in the Macintosh assembly language.

Host Computer. The host commuter, a Digital Equipment Corporation Microvax II, performs the functions of message routing, serial and Ethernet communications management, and data files management. Proprietary software implements these functions in the PL1 programming language.

Computer Graphics System. Colorists use the graphics system to define and manipulate 2-D polygons that serve as masks to enable particular color formulations in regions of the black and white picture. Every coloring system requires four Silicon Graphics IRIS computers to meet the demanding polygon display rates of coloring in which the shape and positions of hundreds of polygons must be updated and redrawn up to 60 times per second. The IRIS computers are supplemented by custom CST hardware that permits them to 1) display large numbers of concave and folded polygons 60 times per second, 2) synchronize the motion of polygons with picture video signals, and 3) increase standard IRIS polygon display rates by threefold. High speed communications between the IRIS's and host computer is afforded by an Ethernet communications network. All the proprietary software that performs the necessary 2-D graphics functions was written by CST in the C programming language.

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Video System. A broadcast quality (NTSC) video system serves as the source of black and white imagery, and the destination of colored imagery. At the heart of the video system are two Sony 2500 1" video tape recorder units serving the source and destination functions. Control of the tape units is exercised by an Intel 80186 microprocessor that executes proprietary code written by CST in the PLM programming language.

Color Adder. This CST-patented/proprietary device converts black and white video to color at the rate of 60 fields per second using as control inputs the polygon video generated by the four IRIS graphics systems (for area definition) and the control inputs from by the Host Computer (for color definition). It consists of six custom analog signal processing PC boards that simultaneously processes eight incoming video channels to generate a single component video output signal. It is digitally controlled via an Intel 80186 microprocessor executing custom software written in the PLM language. In addition to supporting the NTSC video standard, its design accomodates PAL and SECAM video formats.

Diffusion System. The diffusion system preprocesses the masking polygon video generated by the IRIS computers before it enters the Color Adder. It performs a large kernal, spatial low pass filtering operation on the polygon video at the rate of 60 fields per second. Its purpose is to soften the "sharp" edges of masking polygons causing them to be invisible in the final colored product. A Datacube image processing unit implements this computationally intensive function.

FUTURE GROWTH AREAS. There are two technology growth areas presently emphasized for productivity and color quality gains in 1988. The first is new console software that will permit the user interface to rapidly evolve and even be tailored by the colorists to maximize productivity.

The second growth area is a fully Digital Color Adder unit intended to replace existing analog color adders. Operating at approximately 20 Mhz clock rate, it simultaneously processes at least eight digital video channels at a speed of 60 video fields per second. The CST Digital Color Adder will yield increased stability, color quality, and productivity. Its new features will, for example, permit CST to color materials that otherwise would have been rejected for coloring because of poor image quality. It is fully compatible with the new SMPTE 4:2:2 standard for digital video permitting CST to take advantage of broadcast quality digital video equipment such as recently available digital video tape recorders. Additionally, its design accomodates the PAL and SECAM video formats.

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LEO JAFFE
Former CEO, Columbia Pictures

"Color probably didn't come into the picture until the late 1930s...and then only for those pictures that could afford the budget. Color was quite expensive then and the ability to get technicians was difficult, so that by and large most companies confined their color pictures to musicals, costume pictures and other pictures of that type...Budget was the prime object, and unless the picture itself called for color and it was a very important picture, they would normally try to go for black and white...The companies at the start of the year would put out the catalogue which showed the pictures that were shooting and going to be released for that particular year, and we normally designated those that were going to be shot in color and which were going to be shot in black and white."

June, 1997

USA TODAY
Washington, D.C.
May 15, 1987

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Color gives old films a wider audience

Some of the biggest names on the silver screen are singing the blues about the computerized colorization of old black-and-white movies.

Meanwhile, the moguls who are splashing 50,000 different colors onto old movies are in the pink. Videocassettes of colorized films are selling like blue-plate specials. Although some actors and directors are seeing red, the colorizers are seeing green — the color of money.

The brawl sparked by this new technology spilled over into the halls of Congress earlier this week. A packed hearing room heard director Woody Allen, actress Ginger Rogers, and other film bigwigs describe colorization as a blueprint for disaster. Allen said it was "sinful" for anyone to tamper with a movie against the director's wishes.

And it would be sinful if colorization destroyed original black-and-white films. But that argument is a red herring. Originals are left intact. Only copies are colored.

Before a film can be colorized, a black-and-white print must be meticulously restored and copied onto videotape. Computers then color the videotape frame by frame. So far, 25 movies have been tinted on tape, including such evergreens as *Yankee Doodle Dandy* and *Miracle on 34th Street*. Broadcaster Ted Turner, who owns the $1.3 billion MGM library, plans to colorize 100 old films from Hollywood's golden age.

When colorized movies are shown on TV, ratings soar into the wild blue yonder. They lure five to 10 times more viewers than the black-and-white versions, boosters say. When *It's a Wonderful Life* became available in video stores last Christmas, shoppers snapped up 60,000 colorized cassettes — but only 11,000 in black-and-white.

Fans have given colorization the green light. There's no reason why colorized movies should not join black-and-white originals on the video-store shelf.

And frankly, a lot of these old films are white elephants. They have been gathering dust in Hollywood's storerooms for decades. Colorization can restore them to the screen for a generation of movie greenhorns.

True, some film classics are so beautiful in black and white that they cannot be improved. Film fans won't buy desecrated masterpieces. These blue-ribbon flicks will prevail in black and white.

This fight's not about destroying classics. It's about censorship. The anti-colorizers don't want us to see altered works. They want a member of Congress to ride in on a white horse and give them a law forbidding the people who own movies from touching their films.

Let the market prevail.

It's clear that fans want not only *Black Orpheus* and *White Heat* but *Pretty in Pink*, *A Patch of Blue*, and *The Color Purple*.

This squabble does not belong in Congress.

It belongs in the box office where a perfectly good law — the law of supply and demand — will settle it with greenbacks.

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"I remember it well. You were blue and the Germans were, uh, gray." Regardless of what colorization does to Casablanca, the movie business is bedeviled by far more serious problems.

Colorization Is a Red Herring

By Kenneth Turan

It came out of nowhere, this tempest, this storm of storms, erupting from a situation so calm you could almost hear paint drying. Not just any paint, however, but the discreet computerized colors two different firms, Colorization Inc. and Color Systems Technology, were quietly using to add hues to black-and-white war-horses. The first two colorized features, 1937's friendly-ghost story, *Topper*, and Laurel and Hardy's vintage *Way Out West*, were issued in 1985 and everybody smiled for the camera.

Stan Laurel's daughter pronounced herself "delighted, or perhaps I should say overjoyed," at the results, adding, "My father would surely have raised his derby" in tribute. Cary Grant, *Topper*'s star, said he trusted the Colorization folks "will continue to color other memorable films in the same manner." And from the White House, film buff Nancy Reagan wrote that she "didn't think *Topper* could ever be improved, but we were most impressed with the colorization of that fun movie.... A clever idea. The President joins me in sending best wishes for your continued success."

Presidential wishes apparently don't count for as much as they used to because storm clouds soon began gathering, clouds shaped suspiciously like film directors with time on their hands. The venerable Fred Zinnemann, who hadn't worked since the somnolent *Five Days One Summer*, called the adding of color "a cultural crime of the first order" that was surely "against the national interest" and insisted that resisting its encroachment may soon turn out to be "the last stand before the entire art form is totally degraded and goes down the drain."

With a heavy hitter like Mr. Z. leading the way, no director worth his jodhpurs wanted to be left behind, and soon the attacks came pouring in like grapeshot from Captain Blood's cannon. Joe Dante likened it to a death knell, John Huston pronounced himself "astounded [at] the vulgarity of the whole idea," Woody Allen called it "an ugly practice, venal, anti-artistic." Then came the battle of the metaphors, as directors vied with one another for the most creative comparison. The winner: Milos Forman, whose "like putting aluminum siding on a seventeenth-century castle" narrowly edged out Peter Bogdanovich, who, in an unexpected burst of creativity he would've done well to save for his films, called the process "like putting pubic hair on *Venus de Milo*."

Taking the brunt of this punishment was Color Systems Technology, the company with $24 million worth of contracts to color everything from the films of Shirley Temple to John Huston's *The Maltese Falcon* (released in November) and the venerable *Casablanca* (due out this year). CST vice-president Charles M. Powell, a rollicking Hollywood figure who'd been senior vice-president in charge of marketing for Columbia, Universal and MGM, was feeling a little feisty. "People come in here with their stories already written. I know all the questions by heart: 'Why are you doing this?' 'Weren't these films meant to be shot and shown in black and white?' 'Is it true you ruin these pictures?' Give me a break!"

A break, however, was the last thing Charlie Powell was going to get. A blue-ribbon committee of the Directors' Guild of America, announcing that the issue was moral, not commercial, called the colorists "cultural butchers" and charged that "these fellows are lifting their legs on people's work." Not to be outdone, the Writers' Guild lashed out at "cultural vandalism," and the American Film Institute, whose chairman, George Stevens Jr., had called the process "a plague on the history of American film," called a press conference at which spokespersons dressed only in black and white denounced the process as a malicious gimmick.

Earl Glick, the board chairman of Hal Roach Studios, the parent company of Colorization, was reduced to a dazed "I don't believe it" when asked for his response. Glick remembered the day when Frank Capra came to his office and *asked* to have his films colorized, but Capra has long since succumbed to peer-group pressure and withdrawn his support. And over at CST, the voluble Charlie Powell had been silenced. On the advice of its attorneys, a spokesman said, the company was going to take a lower profile.

The colorization brouhaha is more than the usual Hollywood tempest in a teapot. It is a situation made-to-order to illustrate the duplicity and doublethink that make the movie business what it is and our films what they are. Truly, Hollywood is a Wonderland dizzier than anything Alice experienced.

First, though it very much goes against the grain of the situation, let's try to pin down a few facts. No one, Bogdanovich's heartfelt metaphor notwithstanding, is tampering with so much as a frame of an original negative of a black-and-white film. All coloring is being done on tape copies, a process much closer to collage than to desecration. Not to mention the fact that the whole concept of "creative rights" sounds *(continued on page 54)*

All the pious huffing and puffing over a gimmick is really another case of Hollywood duplicity and doublethink

PHOTOFEST; HAND-TINTED BY CHRISTINE ADAMS

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(continued from page 50) awfully suspicious coming from directors who think nothing of ignoring and/or completely obliterating the artistic integrity of screenwriters when it suits their purposes. Now that their ox is being gored, however, it's suddenly become quite a different story.

The fuss also conveniently ignores the reality of the black-and-white-print situation. Yes, it's true, seeing films in color is not seeing them as their makers intended, but on the other hand, seeing them on a tiny television screen, broken up by commercials and arbitrarily shortened to mesh with a network's time considerations, is, if anything, more of a desecration.

And the situation in revival theaters, places none of these protesters apparently frequent, is hardly any better. True, the prints are full-size, but they are often eighty-third generation 16-mm. dupes that are so fuzzy and scratched, Jimmy Stewart comes out looking and sounding like Gabby Hayes. The idea that color is going to drive out gorgeous black-and-white prints ignores the fact that aside from archival showings those pristine originals are already scarcer than VW bugs at Mortons' parking lot. And to those fearful that color will force b-and-w tapes from the market, Earl Glick, whose company distributes *It's a Wonderful Life* in both versions, says absolutely not, "the boxes and the masters are already made. We will sell both as long as there is a demand."

Yet another bogus argument concerns the quality of the color. Much has been made of its lack of pizzazz, and swetterman Ebert and Siskel, pious as choirboys at a right-to-life rally, have protested such sacrileges as the mistaken brown coloring given Frank Sinatra's eyes in the 1954 picture *Suddenly*. Yes, it's true that the color is nothing to die for, and mistakes have been, and will continue to be, made. But the CST folks are expending a considerable amount of effort on color authenticity, and it's without question that the process will improve. And even if it doesn't, there are positive aspects to colorizing that have not been given their due.

For one thing, though it may be heretical to suggest it, color has the potential to increase audience interest in classic films. Like it or not, most moviegoers, especially younger ones, have little patience with black and white. "Our research told us that 35 percent of viewers prefer seeing movies in color," says Cheryl Lynne Gersch, marketing director for Hal Roach Studios. Isn't it at least conceivable that these films could function in the same way that Charles and Mary Ann Lamb's famous *Tales From Shakespeare* have for nearly 200 years, as a way to introduce material to an audience that otherwise might choose to ignore it? If a choice needs to be made between people widening their horizons by seeing great films in color or not seeing them at all, it would seem only logical that the advantages to be gained, in whatever form, would offset any negatives.

And there is no doubt that people are responding to what's been done to these films. When *Miracle on 34th Street*, hardly the greatest picture ever made, was televised in a colorized version in 1985, the audience it drew was 600 percent greater than that of its previous black-and-white showings, making it the highest-rated syndicated film of the entire year.

It is this very area of audience response that provides the skeleton key that unlocks the secret of this death-before-dishonor fuss. Basically, all the colorists are saying is "no harm, no foul": If an audience decides this is what it wants to see, so be it. Should this argument sound familiar, it's because it's the very one the powers that be in Hollywood invariably use to justify not-so-tasty items like *Rambo*, *Cobra* and *Friday the Thirteenth, Part VI*. "Is it our fault if people like this stuff?" is their invariable, somewhat plaintive defense. Why, all of a sudden, has this reasoning been found lacking?

Bashing colorization is an opportunity too good for the industry to pass up.

The answer is that—no surprise—appearance counts more than reality in Hollywood. This is an industry where a right-thinking but ponderous and predictable movie like *Gandhi* can win the Best Picture Oscar because voting for it allows the Academy poon-bahs to feel a spiritual kinship with Mother Teresa as they luxuriate in front of their swimming pools. It is a way to take a stand and strike a pose without any risk or even the slightest discomfort, and that, like bashing colorization, is an opportunity too good to pass up.

Watching all these self-appointed guardians huffing and puffing about the death of an art form is a little like watching John Wayne riding in to rescue a bunch of besieged settlers. Because—in case you haven't noticed—the movie business is bedeviled by a whole bunch of problems far more serious than colorization. But have you heard of any organized institutional protests about the way films pandering to teenagers are strangling the adult audience? About the unconscionable multimillion-dollar cost of studio productions, a cost that has the most chilling effect possible on the chance for anything but lowest-common-denominator films being made?

Of course not, because those are pocketbook issues: they mean money both to individuals and, more important, to the studios that employ them. The truth of the matter is that despite the occasional lip service paid to the idea of quality films, most of Hollywood is living too good a life off bad films to really care if they get better or not. The fancy cars, the exclusive parties, the celebrity screenings, the big salaries—they all exist whether films are inferior or superior. If these ever-so-concerned directors really cared about whether the film business was in its death throes or not, they'd be suggesting things like salary caps for themselves and actors and everyone else involved in the business. But that would be threatening the goose that laid their golden life-styles, and no one in Hollywood wants to be an artist all that badly.

The saddest thing about this whole colorization business is how much filmmakers want to be thought of as artists and how little they are willing to sacrifice to gain that sort of recognition. The directors who made the films in Hollywood's heyday, men like John Ford and Alfred Hitchcock, by and large considered themselves craftsmen and popular entertainers: they were concerned with giving value for money, both to the audience and to the studio. But the auteur theory compounded by the adulation of generations of graduate students has given directors swelled heads: When a first-time director insists on "A Wil E. Coyote Film" credit, he really believes he deserves it.

Unfortunately for these people, when you open the movie section of any major newspaper and look at the ads for what's playing, "art" is the last word that comes to your mind. Too morally bankrupt to do battle with the real forces of evil, the solons of Hollywood have grasped the straw of colorization in a feeble attempt to convince the world at large that they are serious about what they do. This macho attempt to assert a dubious cultural manhood, however, is not likely to fool anybody, or solve any of the very real problems in the movie business. What everyone seems conveniently to forget is that what made *It's a Wonderful Life* a great film was not that it was shot in black and white but that it was the expression of a sensibility that has all but vanished from Hollywood. And it'll take more than bellyaching about colorization to bring it back. ■

Kenneth Turan is GQ's movie columnist and a member of the National Society of Film Critics.

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POINT OF VIEW:

Colorization Has A Place

By THOMAS M. PRYOR

Colorization of pix originally made in black and white is becoming an international issue. British film directors are against it, as well as numerous Hollywood colleagues, and there's talk that the Directors Guild of America is about ready to take a formal stand. Among the many individuals unfriendly toward colorization, and whose voice carries much weight, is Fred Zinnemann, holder of four New York Film Critics Awards, two Directors Guild Awards and three Academy Awards.

Granted there are certain pictures which would not be improved by colorization, and in fact, would lose much of their artistic integrity and dramatic punch. But to argue that all pictures shot in b&w are not suitable for color treatment is utterly ridiculous. Each subject warrants being considered, and very carefully taking into account the creative decisions — not just the fact, as in many instances, that it was cheaper to shoot in b&w.

Just recently we had opportunity to look at "Yankee Doodle Dandy" as colorized by Color Systems Technology. It's a new picture, the vitality of which has been enhanced by bringing it into this modern color world. "Yankee Doodle Dandy" was an electrifying musical in its original b&w. All of its quality has been preserved and enhanced by carefully balanced color treatment. It would have been a shame for this film to be relegated to the archives and occasional viewings at retrospectives and by buff audiences.

Now "Yankee Doodle Dandy" has every prospect of an exciting new life — just as "Miracle On 34th Street" was enhanced by transforming it from b&w to color.

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RONALD R. HAVER

Curator of Film
Los Angeles County Museum of Art

"From what I've seen and heard of the colorization process, it does no damage whatsoever to the original negative material. In fact, in many cases, it's a boon to film preservation. In the case of 'The Sea Hawk' I do know that the people involved in the colorization situation went all over the world to try to put the film back together. It has not been seen in its full-length form for almost 30 years. They put it back to its full-length form and made a new negative, a new print, and I imagine that will be in an archive somewhere for future generations to be able to get to.

In the early days of Technicolor, there were a certain number of films that could be made in Technicolor because of the scarcity of cameras. You had to line up, in advance, and get your commit-tment. David Selznick wanted to make 'Dark Victory' in Technicolor as his first modern film. At the last minute he decided that it should be 'A Star Is Born'. So what he did is he sold his script and his Technicolor committment to Warner Brothers. They thereupon turned around, used the Technicolor committment for 'The Adventures of Robin Hood' and filmed 'Dark Victory' in black-and-white. Now, it's very ironic that 'Dark Victory' is being colorized, which is what it was going to be in the first place.

The individual choice is what we are talking about here. This colorizing actually comes down to the fact as to whether the individual wants to see it in color or not. To take away that choice from him---to say 'no you cannot see it in color you can

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you can only see it in black-and-white,' I think flies in the face of everything that supposedly the country is about. I don't think a prejudice should be created to say to someone, 'you should not enjoy this film this way'. If you can enjoy a film enjoy it, whether it be black-and-white, in color, in a theatre, or on television or home video."

June, 1987

Film Snobs Assemble a Color Guard

By Richard T. Marin

Woody Allen should be the first to go. Colorize "Manhattan." I say. And let us spruce up "Stardust Memories" and "Interiors" while we're at it. "The Sorrow and the Pity" in Miami Vice-style pastels. Cool. "The Seventh Seal" in psychedelic Day-Glo. It sure would make the subtitles easier to read.

I speak, of course, of the computerized tinting of vintage black-and-white films that is causing so much wailing and gnashing of teeth these days among directors, critics and actors. And I would like to say that I'm all for it.

Now, I am a person as capable of cinematic snobbery as the next guy. Eisenstein, Bunuel, Pasolini—these names cross my lips frequently and with ease. Have I seen Rainer Werner Fassbinder's 15½-hour epic, "Berlin Alexanderplatz?" Of course. Am I familiar with the early numbers of the "Cahiers du cinema," the estimable French journal of "filmic" theory? *Bien sure.* I am an avowed *cineaste*, an aficionado of the first water. But when it comes to coloring the classics, I fail to see what the fuss is about.

Ever since Ted Turner announced his plan to colorize 100 of the 3,000 titles he acquired from the Metro-Goldwyn-Mayer-United Artists library, there has been an outcry of alarming magnitude. John Huston emerged from reclusion to complain indignantly about the colorizing of "The Maltese Falcon," calling it "as great an impertinence as for someone to wash flesh tones on a da Vinci drawing." More invective aimed at Mr. Turner's scheme came from Woody Allen ("a criminal mutilation"), Jimmy Stewart ("cultural butchery"), and a host of pompous critics and film scholars who have devoted thousands of words to perpetuating the myth that black-and-white cinematography is somehow artistically superior to color. Listening to these cries of moral outrage, one would almost think it was the prospect of seeing "His Girl Friday" in color that contributed to Cary Grant's recent death.

But wait. This thing has surely gotten out of hand. It's not as if Ted Turner is painting over the old prints with a spray can. They are transferred to videotape, then "touched up" by computer; the original is preserved for posterity. Nor, as the widow of the director Otto Preminger points out, can anyone be forced to watch a colorized movie: Two-tone fetishists can simply turn down the color knob on the TV, if that is their perverse desire. But I fear the hue and cry raised by Mr. Turner's enemies carry nasty fascistic overtones. Not only do they not want to watch colorized movies, they don't want anyone else to either. They've even enlisted the aid of Sen. Ted Kennedy, who says his proposed legislation to protect artists from having their works destroyed or distorted could also be used to guard the makers of black-and-white films from colorization.

This is unpleasant and foolish elitism, anti-populist and curiously anti-progressive. It seems the film industry has become a bastion of fogeyism, more concerned with the preservation of old films than the making of new ones.

The public, however, is not. I, for one, am eagerly awaiting a colorized "Casablanca." Imagine, Sidney Greenstreet's fez come to life in living color; is it vermillion, or blood red? And the famous fly swatter with which he squashed troublesome insects while dispensing pearls of cruel wisdom—did it have a color? I foresee the birth of a new profession, one that will take its place alongside that of "gaffer" and "best boy" in the credit roll: "special color researcher" or "color consultant." A new generation of beret-clad video artists will emerge, enthusiastically dipping miles of celluloid into the color pot. Ultimately, viewers may themselves be able to colorize with a mere touch of that increasingly powerful and vital tool of domestic life, the remote control.

The possibilities are endless, and inevitable. Because like the talkies, colorization is here to stay.

Mr. Marin is an assistant editor of Harper's magazine.

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GENE ALLEN
Past of President, Academy of Motion Picture Arts & Sciences
Academy Award Winner: "My Fair Lady", Best Art Direction

"This is the new art form of the century. The need is to be sure that art keeps up with the technology...In the history of the motion picture industry, technology and the arts moved forward together. Certainly your cameraman, costume designer, art directors, all of these people were involved in every step of the advancement in technology. And what interests me at the moment is with this new process that the art of coloring moves along with technology. I think they work together."

June, 1987

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"Light Brigade" Scores With Critics

20 Part VI / Friday, July 24, 1987 ★ Los Angeles Times

IGNORE SPOTTY RECORD

'LIGHT BRIGADE' BENEFITS FROM COLOR

By TOM SHALES,
The Washington Post

WASHINGTON—It is one thing to salute smartly and charge up a hill. It is another to salute smartly and charge into the Valley of Death. Errol Flynn did the latter in the rousing 1936 swashbuckler "The Charge of the Light Brigade." Now he's leading the charge again, this time in color.

Coloring old black-and-white movies by computer has been a commercial bonanza for those who own the rights to the films, and a big jab in the eye to film makers and movie buffs. Until now, the process has yielded extremely spotty results. But, painful as it may be to admit it, "Charge of the Light Brigade" is actually improved by the computer coloring. It's even better than it already was.

WTBS, the Atlanta SuperStation carried on more than 200 cable systems throughout the country, recently gave the film its "world color premiere," followed by repeat showings throughout July (another comes up Saturday at 9 a.m.). Later, the new color version will be syndicated to TV stations and made available in home video formats.

"Charge" is one of the pre-1948 Warner Bros. films now owned by media magpie Ted Turner. Turner has threatened to colorize, among other films, the all-out classic "Casablanca," starring Humphrey Bogart and Ingrid Bergman.

There is no way that "Casablanca" is going to benefit from such arrogant technological revisionism. But a spirited outdoor adventure like "Charge of the Light Brigade" does benefit. It is considerably heightened up and re-energized.

Viewers who are so unimaginative they can't watch a black-and-white film are likely to become new fans of "Light Brigade" now that it's in color.

By no stretch do the colors in "Light Brigade" look as they would have if the film had been made in Technicolor originally. Even though the process was still very young back then, it produced colors much more vivid and saturated than those the computers dole out. Even so, subtle and powdery colors seem to suit "Light Brigade," which is set largely in the arid wilds of India in the 1850s.

The coloring process appears to have improved since such early, murky disasters as "Topper," now rerunning on The Disney Channel. Some of the color-enhanced skyscapes in "Light Brigade" are borderline gorgeous.

As for the movie, it is terrific and spectacular hokum derived from Alfred Lord Tennyson's romantic poem and not based on historical fact. A prologue concedes this. Flynn plays a captain of the Bengal Lancers who's so noble, he rides off to certain death after bequeathing his fiancee (Olivia de Havilland) to the sissy brother (Patric Knowles) for whom she jilted him.

"Light Brigade" was directed by Michael Curtiz, whose dozens of other films include "Casablanca" and "Yankee Doodle Dandy." But the charge itself, the 15-minute segment that ends the film, was supervised by B. Reeves (Breezy) Eason, a whiz at action sequences. Well after the film was released, it was revealed that several horses died during filming because of "trip wires" used to make them fall during the charge. The industry subsequently adopted stricter rules on the treatment of animals used in movies.

Even with those poor unfortunate horsies in mind, the charge as led by Flynn is a breathtaking finale. Somehow re-creating it seems as grandly foolhardy as undertaking it in the first place (even though the actual circumstances of the first one were completely different than those dramatized). Were 600 extras used to play the "noble 600" who made the charge? Knowing Hollywood, there were probably 800 extras, just for good measure.

The charge ranks with the chariot race from "Ben Hur" as an exhilarating lollapalooza. They don't, can't and won't make them like this any more.

Color Systems Technology, the firm that did the coloring, worked from a complete print of the film. It includes a flowery and effective opening preface, dedicating it to the Light Brigade. This portion is missing from the black-and-white home video version currently distributed by Key Video. It is mislabeling to call that version complete.

Until the '50s, Hollywood movies functioned as America's chief and most capable mythmakers. Then television came along and with it, new apparatus for manufacturing heroes and heroines—actual and illusory, and sometimes a little of each. Watching the dashing Flynn atop his gallant steed, fearlessly leading troops into battle, one can be blamed for thinking, "I liked it better the old way."

At the end of the film, an officer throws an incriminating document into a fireplace and burns it up. They didn't have paper shredders then.

THE NEW YORK TIMES, SUNDAY, JULY 19, 19

HOME VIDEO

Colorful Flynn

The Sea Hawk

With Errol Flynn, Brenda Marshall, Flora Robson, Claude Rains, Henry Daniell. Directed by Michael Curtiz. 1940.
CBS/Fox Video
128 minutes. $59.98.

There is something to be said for colorizing a foamy outdoor adventure like this. As English galleons attack marauding Spaniards, white sails and shipboard browns stand out against blue sides. An exotic Panama jungle, in one sweaty sequence, looks it. The trappings of the Elizabethan court attain new splendor. True, at times ocean waters veer toward purple, but then they snap out of it. Human pallor is a standard pale pink. Fair enough.

The film is a lavish swashbuckler with sensible historical footnotes. Flynn (in photo, right) makes an entirely credible Sir Francis Drake, bold guardian of Her Majesty's watery domain. Miss Robson's Queen has becoming bite, likewise Rains and Daniell (in photo, left), on the Spanish side. Miss Marshall is bright-eyed and pretty. Add the ripe Curtiz pacing and direction and a rich score by Erich Wolfgang Korngold.

"I thought 'Sea Hawk' already was in color," a co-viewer said, as the credits unrolled. It is now, and no harm done.

—*Howard Thompson*

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Video Reviews



The Music Man's *Jones, Preston: a con man, a librarian and 76 trombones.*

HE MUSIC MAN ★★★★
obert Preston, Shirley Jones, Buddy 'ackett. Directed by Morton Da Costa. 962. (Warner cassette, Hi-Fi stereo, 15 min., $29.95)

By Ed Hulse

...s prerecorded video version of *The ...usic Man* is as close as you can get to ...ving Robert Preston himself march ...rough your living room as he sings "76 ...ombones." That's because the rere...rded Hi-Fi stereo soundtrack is among ...e finest I've heard on any cassette.

The Music Man, of course, is the story ... an amiable con man (Preston), who ...rives in River City, IA, circa 1910 to ply ... trade. His primary scam, the selling of ...sical instruments to local families with ... hope of starting a marching band in ... community, falls under the scrutiny ... a skepical librarian (Jones), who in ...n falls under the spell of the smooth-...cing sharpie.

...Even if you're one of the few who've ...er seen *The Music Man*, on stage or ...en, you've surely heard its wonderful ...gs, including "76 Trombones," "Till ...ere Was You," "Goodnight My ...meone" and "Trouble" (the original ... song?). The first-rate cast not only ...s all of them well, but director Da ...sta also has interestingly attempted a ...on of theatrical and cinematic styles ...resenting some of them. For example, ...Shirley Jones finishes the gentle ...ght My Someone," the set be...r is darkened while a spotlight is ...d on her face. As she holds the last ...e, the spotlight "irises" down as her ...e fades out, bringing the screen into ...kness—an effect common on the ...e but not in movies. In his zeal to re-create a theatrical experience, Da Costa has cheerfully dismissed the illusion of reality so fervently coveted by most movie-makers—and it works beautifully, giving *The Music Man* a charm and visual grace which complement its classic book and lyrics perfectly.

WILDCATS ★★
***Goldie Hawn, Swoozie Kurtz, Nipsey Russell. Directed by Michael Ritchie. 1986. Rated R.* (Warner cassette, Hi-Fi Stereo, 104 min., $79.95; LV disc, stereo, $34.98)**

By Steve Simels

A modest little movie that (in Winston Churchill's phrase) has much to be modest about, *Wildcats* is a sort of *Private Benjamin Meets Rocky*. In it, Goldie Hawn, typecast as a dingbat making the transition to independent woman, becomes the coach of a pathetic inner-city high school football team. There are the usual comic and inspirational results—as everybody emerges a warmer, more wonderful human being and, of course, the team wins the Big Game at the end.



Hawn in Wildcats: *touchdown!*

Despite the movie's predictability, it does deliver some laughs. The performances are all very good and the ghetto humor is sometimes scabrously, subversively funny. But, overall, the picture is a major missed opportunity for director Michael Ritchie. Earlier, he skewered politicians (*The Candidate*) and the beauty pageant business (*Smile*), so he would seem a likely candidate for taking on high school athletics—a subject certainly ripe for spoofing. All he's actually delivered in *Wildcats*, however, is a "Me Decade" self-improvement screed disguised as a gritty pearl of comic realism. Worth a rental, but just barely.

COLORIZED

YANKEE DOODLE DANDY ★★★★
***James Cagney, Joan Leslie, Walter Huston, Jeanne Cagney. Directed by Michael Curtiz. 1942. Colorized 1986.* (CBS/Fox cassette, 126 min., Hi-Fi mono, $59.98)**

And dandy it *is* in color! For more than 40 years, in plain ol' black-and-white, this rousing movie bio of song-and-dance man George M. Cohan has remained one of the great '40s musicals. Now, colorized, it looks better than ever.

Colorization (by Color Systems Technology Inc.) really works for this one. The hues have the feel of early Technicolor (appropriate for this vintage of movie) and they particularly bring the reds, whites and blues of Cohan's patriotic numbers vividly to life in the many musical sequences.

There are still a few colorization problems, however, especially with greens—and one brief scene in which a wartime troop ship suddenly appears as pink. But, in general, these blemishes don't seriously distract from the addition of color's many pluses.

As biography, *Yankee Doodle Dandy* is often inaccurate and the wartime patriotic angling of the script is sometimes too obvious. But the spirited playing of the whole cast and Curtiz's tigh[t] (the year before he made *Casablanca*) keep everything moving brightly and snappily. And Cagney is, well, simply dandy. (R.H.)

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VARIETY

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B&W-Vs.-Color Poll Gives Nod To Full Palette

New Orleans, Jan. 25 — The Hollywood community may still be divided over the merits of computer-colored black-and-white films, but a good indication of what the viewing audience prefers has emerged from a unique broadcast aired last Thursday by indie station WDRB-TV in Louisville.

Station aired alternating half-hours of "Yankee Doodle Dandy," first in black and white and then in color, alongside a live call-in poll.

More than 3000 callers responded over the three-hour telecast, and the viewer verdict on which one they preferred was two-one in favor of the color version. Actual tally was 2071 (67.2%) for color, and 1011 (32.8%) backing the black-and-white original.

A number of stations, including KTLA, Los Angeles, have taken similar polls, but this is the first time a station has aired a computer-colored film in alternating black-and-white and color segments, giving viewers a chance to compare the versions for themselves, according to WDRB-TV prez and general manager Elmer Jaspan, who originated the idea.

Telecast of the live special also included station host Ray Foushee and vidtaped comments from Turner Broadcasting v.p. Jack Petrik (Turner Program Services is distributing colorized classics to stations) and several local tv, film and arts critics trying to explain the process and explore the so-called controversy of coloring pix.

Festival Identity

Jaspan said his station has built something of an identity with festivals of old series and live call-ins for the past five years, and the poll was a natural combination of both concepts.

Station bought two other color-added pix from Turner, "The Maltese Falcon" and "42nd Street," but Jaspan said they'll be aired in color, with no further poll planned.

Poll results of viewer tastes look to be more bad news for film purists who object to altering the original motion pictures but a shot in the marketing arms of computer coloring outfits, such as Hal Roach Studios, Color Systems Technology and the latter's new joint venture with Coca-Cola Telecommunications, which will color pix from Columbia's library of titles.

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...MENT FOR PROFIT

THE MONEY OF COLOR

"THE AMERICAN PUBLIC IS very stupid, very infantile. In fact, they're idiots. They can't enjoy a film unless it's full of bright colors. . . . just give the fools reds and yellows, and they'll smile."

The speaker is Woody Allen; he's imagining how someone who colorizes black-and-white movies might justify his job. Allen's comments are meant to be sarcastic, but in fact, the American public does prefer reds and yellows to black and white.



"WONDERFUL LIFE" AND "MIRACLE" IN LIVING COLOR

COURTESY HAL WALLIS

Jack Brooks, a vice president of RKO Warner Theatres Video International Inc., which runs a chain of video stores, claims that customers prefer to rent or buy the colorized versions by a margin of five to one. The colorizing of Frank Capra's Christmas classic, *It's a Wonderful Life*, in particular raised a storm of protest. But over the past two holiday seasons, the colorized video sold more than 200,000 copies, while the black-and-white original sold fewer than 60,000.

Colorized movies also fare better in television syndication. *Miracle on 34th Street*, for example, had earned a total of $1 million in the twenty years it was shown in black and white. But the colorized *Miracle*, which has been syndicated for the past three years, has already earned $2.7 million.

Colorizing also seems to benefit some lesser-known films. Two Errol Flynn swashbucklers—*Captain Blood* and *The Sea Hawk*—had earned a total of $200,000 each in syndication fees since the 1950s. As part of Ted Turner's Color Classics series, they made between $700,000 and $800,000 each in less than a year.

Critics such as Woody Allen have charged that colorizing is a violation of the director's artistic intent. And early colorizing efforts were often publicly ridiculed for their sloppiness. For instance, Frank Sinatra (known as Ol' Blue Eyes) was given brown eyes in *Suddenly*.

Last summer, however, the United States Copyright Office ruled that whoever holds the copyright—in most cases the studio—has the right to colorize, even if the director and the entire cast object. "The favorable ruling from the copyright office has generally killed the controversy," says Charles Powell of Color Systems Technology Inc. "If we are hired by the owner to color, then, by God, we have the right to color. And the public has accepted color-converted movies. They don't give a damn."

Ted Turner, who owns the film libraries of MGM, RKO, and pre-1950 Warner Bros., expects to earn at least $10 million a year from colorized movies. About two thirds of the 3,400 features and 135 television shows are in black and white, and his Turner Entertainment plans to colorize at least 200 of them, at the rate of 2 a month.

Sometimes video stores stock only the colorized version of a movie. "Those who like the original, we simply tell to turn down the intensity of their color," says Brooks. "By buying the black-and-whites, you are only into the nostalgia buffs and not the people who really enjoy watching movies." DON LIPPER

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R

JOSE FERRER
Actor-Producer-Director
Academy Award Winner, "Cyrano," 1950

"'Cyrano' should have been made in color, if the studio had had any faith in it. We were given four weeks and a low budget, so color was definitely out. I'd be happy to see a colorized version of 'Cyrano.'"

June, 1987

LOIS LAUREL HAWES
Stan Laurel's Daughter

"That's my biggest regret, that they (her father and her 'Uncle Babe') are not here to see the colorization. They wouldn't believe it. It's just enhanced it so much. It's beautiful."

June, 1987

T

Comments from Hollywood Stars:

"Dear Mr. Powell {executive vice president, Color Systems Technology}: Thank you for my copy of Sgt. York. I'd forgotten how good it was - and its better in color."

JOAN LESLIE, July 10, 1988

"Dear Mr. Adelman {senior vice president, Color Systems Technology}: I don't know enough about the (colorization) issue to have a strong view, except to have confidence in the public - who will be the final arbiters of what they want to see and what they will get."

DOUGLAS FAIRBANKS, JR. July 18, 1988
(Star of CST's newly colorized "The Corsican Brothers")

U

THE NEW YORK TIMES, WEDNESDAY, DECEMBER 3, 1986

Letters

Color Her Pleased

To the Editor:

I'm for coloring old films. For over 35 years I have seen myself in "Miracle on 34th Street" (I was the woman Macy's sent to Gimbels), and to see it in color last year brought a liveliness to the screen and the way we all see — "in color." If the technology had been invented sooner, I'm sure that more films would have been made in color.

FRAN LEE

New York, Nov. 8, 1986

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SCREEN ACTOR — Winter 1987

MAILBOX

The Color of Money

I'm sorry, but I totally disagree with so many of the big stars and directors concerning colorization of their works. I think colorization has put new breath into a lot of these oldies (the films, not the stars). I'm not a young kid, but I have watched a lot of films I would not have bothered with had they not been colorized. I just love seeing them "come to life" and anyone who tells you it ruins the black and white is full of beans. Most old musicals were made in black and white because color was expensive and not of top quality.

Now the old-timers are trying to feed the public and Washington the line that the films were made in black and white "for art's sake." Fine, let them watch them in black and white. Within the next 20 to 50 years, maybe less, the people who are fighting colorization will be gone. Their films will be here, but only the most hardened film buff will be interested in seeing them in black and white.

The bottom line is simply this: the people making the most noise are mad because they didn't think of it first and they can't make a dime from their old turkeys being colored. It's always money! I see nothing wrong with colorization. It's like a woman taking a well-made, fine old dress and redoing it so she can wear it according to today's style. Black and white films are a relic of the past.

Gregg Clifton
North Hollywood

Color Censorship

The essence of the colorization issue lies not in esthetics, but in man's right to innovate without coercion. Woody Allen has had the freedom to innovate, and the result is a body of work both attractive and salable to a large audience. Since this is precisely the goal of the colorists, he must be consistent and grant them the same creative freedom he enjoys.

Mr. Allen owns a product (his talent) and sells it, unencumbered by government legislation. Why should he contradict his position by advocating legislation against other owners? The fact that their product offends his sensibilities is not sufficient grounds, at least not in America.

If colorization gains no audience, so be it. A free marketplace will determine a product's acceptance or rejection. Can't Mr. Allen and his colleagues see the destructive consequences of their stance? Governmental restriction of the right of ownership (which is, incidentally, a pillar of all totalitarian regimes) must ultimately filter down to those who work *for* the owners — in this case, the writers, directors, actors, etc. Moreover, I find it ironic and hypocritical that such a group, which would clearly fight censorship of their own activities, would wish to impose a form of censorship on another's activities.

I believe Mr. Allen is right that colorization will ultimately fail. But it must not be legislated out of existence. Can't the anti-colorization faction grasp that legislation over film ownership must necessarily lead to controls of the creative output upon which that ownership depends?

David M. Ragaini
Scarsdale, NY

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DAILY VARIETY 8/2/88

W

LETTERS TO THE EDITOR

WGA Vs. AMPTP

Editor, *Daily Variety*:

Re: Letter to the Editor from writer Charles Pogue (*Daily Variety*, July 27).

Talk about rubbing our noses in it. Of course we know the importance of the screenplay writer in our business. There is not one actor, director, producer, or technician who hasn't experienced the excitement of having a scene come to life before their eyes.

We've also cringed when a script that read well just didn't sound right when it was finally time to be acted before the camera. However, to state that the writers are the *only* creating entity on a film is to disregard the input of so many talented individuals.

Photography, music composition, architecture, painting, clothing design, choreography and others are considered creative arts in their own right.

The fact that those involved in making films have chosen to focus their energies towards a common goal (collaboration) doesn't make their contributions any less valid. The writer's role in the process is vital to be sure. But none of our work stands alone.

You're correct Mr. Pogue, they *do* call it a Frank Lloyd Wright *house*. And if the "guys who put it together" hadn't been there, we'd be calling them Frank Lloyd Wright blueprints.

I trust he had more respect for his builders than Mr. Pogue does for us. What if Mr. Wright had been a set designer? Would that have made him any less creative, an interpreter?

How many Americans have huddled in a darkened theater and enjoyed reading a screenplay by the light of an empty white screen? I say, if the writer has a need to be recognized for his sole efforts, then he/she should write novels etc., where the written work is the end product and can be appreciated as such. If that's not enough, and you've got the skills, finance, produce and direct your own scripts. Otherwise, join the team. Good luck.

Jonathan West
Director of Photography
Member, International
Photographers Guild,
Local 659 IATSE
Chatsworth, Calif.

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COLOR SYSTEMS TECHNOLOGY Inc.

PUBLIC ACCEPTANCE OF
COLOR-CONVERTED FILMS

X

TBS, Ted Turner's SuperStation, reports some remarkable results from its airing of color-converted motion pictures from Color Systems Technology.

* Ratings are consistently higher from their color-converted product
* "Yankee Doodle Dandy" was viewed in 1.6 million homes in its Premiere showing, 2.6 million homes overall
* "The Fastest Gun Alive" was seen in 2.2 million homes in its Premiere showing
* "The Maltese Falcon" earned a 1.4 million household rating in its initial airing, and 2.7 million homes viewed it overall
* "Destination Tokyo" was viewed in 1.7 million homes in its Premiere showing, 3.7 million overall.
* Disney aired CST's color-converted "Shaggy Dog" on the full ABC Network in prime time this past Fall, the first time color-conversion was shown on a Network
* Twentieth Century Fox had earned $50,000 per year for the past ten years with its classic black-and-white "Miracle On 34th Street." Since CST color-converted the film, Fox has earned nearly $3 million over the past three years

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UNIVERSITY OF CALIFORNIA, LOS ANGELES UCLA

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August 3, 1988

UCLA FILM AND TELEVISION ARCHIVE
1015 NORTH CAHUENGA BOULEVARD
LOS ANGELES, CALIFORNIA 90038

(213) 462-4921

Mr. Francis Gyermek
Color Systems Technology, Inc.
4553 Glencoe Avenue
Marina Del Rey, California 90292

Dear Mr. Gyermek:

This is to acknowledge with thanks Color Systems Technology's participation in the UCLA Film and Television Archive's current Hollywood Before the Code film series. You have authorized Paul Spehr of the Library of Congress to loan UCLA the Library's 35mm print of I COVER THE WATERFRONT, enabling us to present this film to our audience in the format in which it was meant to be exhibited. The print will be exhibited once at UCLA on the evening of August eleventh. UCLA assumes full responsibility for the print while it is in our custody and for returning it to the Library of Congress.

If you or other members of Color Systems Technology's staff would like to attend the screening, please call me and I will be delighted to arrange admission for you. Thank you again for your cooperation.

Sincerely,

Charles Hopkins

Charles Hopkins
Motion Picture Archivist

[Film colorized 1919-1930]

2

UNIVERSITY OF CALIFORNIA, BERKELEY

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Pacific Film Archive
University Art Museum
2625 Durant Avenue
Berkeley, California 94720
Telephone: (415) 642-3035/642-1412
Telex: 9103667114 UC BERK BERK

October 22, 1987

Mr. Francis Gyermek
Screen Gems Classicolor
2091 W. Alameda Avenue, Suite 480
Burbank, California 91505

Dear Mr. Gyermek:

As we discussed on the phone yesterday, the Pacific Film Archive would like your permission to screen THE YOUNG IN HEART (1938, directed by Richard Wallace) as part of our January lecture and film series presented by Professor William K. Everson. Our showdate for a single screening of THE YOUNG IN HEART in our own theater would be January 28; the screening would be open to members of our museum, University students and general public.

We would be pleased to credit Screen Gems Classicolor in our monthly calendar and/or Color Systems Technology as you desire.

This screening is of course a non-theatrical presentation; the Pacific Film Archive is the film curatorial department of the University Art Museum of the University of California at Berkeley.

I look forward to hearing from you, and thank you and Color Systems Technology for your kind cooperation.

Sincerely yours,

Edith R. Kramer

Edith R. Kramer,
Film Curator and Director

[To be obliged February 27]

A House full of film critics

The artistic worth of the greatest American films has been accepted for so long that people forget that movies, like TV, began as a cheap popular entertainment that earned sneers from the elite.

Every new entertainment variation, if it appeals to enough people, is bound to face opposition from those who see it as mere twaddle.

And that's fine—until Congress gets involved.

At issue this week in the House of Representatives was a bill calling for the establishment of a "National Film Commission" whose main purpose would be to designate certain films as American classics.

Under penalty of law, TV programers could not colorize or edit these movies in any way unless viewers are warned at the beginning.

Furthermore, anyone showing these films in an altered form apparently would also have to tell viewers how the creators of these movies feel about the changes. And if the creators are dead, than the National Film Commission will simply guess how they would have felt.

To us, the whole enterprise seems like a waste of time. What is Congress trying to protect here?

Neither colorizing nor editing a film to fit a time slot does any damage to the original full-length movie. And in this age of home video, purists who take their black-and-white films straight can get them that way.

Moreover, all available data indicate that people do like colorization: Colorized films far outsell their monochromatic counterparts in video stores, and syndicated sales of colorized films are booming. Why penalize TV for giving viewers what they want?

And keep in mind that the Copyright Office has already ruled that only the rights holder—generally the studio, and not the movie's creators—has any say on colorization.

The bill's presence last week was the result of a continuing campaign by Hollywood stars to protect their favorite films. But it is a mistaken effort.

The ultimate effect could be simply to convince programers not to show these movies at all, rather than deal with all the headaches. And that's a result no one wants.#

Electronic Media

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ALLIANCE OF MOTION PICTURE & TELEVISION PRODUCERS
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SHERMAN OAKS, CALIFORNIA 91423
(818) 995-3600

CAROL A LOMBARDINI
VICE PRESIDENT
LEGAL AFFAIRS

July 23, 1987

NOTICE TO PRODUCERS:

Enclosed is a draft of the Producers' final package with regard to creative rights matters. These changes, together with those set forth in the Memorandum of Agreement sent to you previously, will become part of the 1987 Directors Guild of America Basic Agreement (and Freelance Live and Tape Television Agreement, where applicable), if ratified by the DGA membership.

Please remember that this is only a draft; it is not contract language nor has it been submitted to the Directors Guild for review. Should you have any questions, please feel free to call me.

Sincerely,

Carol

Carol A. Lombardini

CAL:sjk
Enclosure

RECEIVED
JUL 23 1987
CAROL L. AKIYAMA

7/22/87

NOT CONTRACT LANGUAGE

PRODUCERS FINAL PACKAGE
REGARDING CREATIVE RIGHTS

1. Amend Article 7 of the Basic Agreement to provide that with respect to theatrical motion pictures, the principal photography of which commenced on or after July 1, 1987, the Director shall have the right of consultation with respect to coloring, time compression and expansion, panning and scanning, and changes to allow exhibition in three dimensions of the motion picture contemplated to be made after delivery of the answer print. The Director's services in connection with such consultation shall be provided at no cost to the network or Employer or distributor.

RECEIVED MAY 2 2 1987

Directors Guild 1987 Proposals

DIRECTORS GUILD OF AMERICA'S

CREATIVE RIGHTS PROPOSALS

FOR

DIRECTORS GUILD OF AMERICA BASIC AGREEMENT AND

FREELANCE LIVE AND TAPE TELEVISION AGREEMENT OF 1987

May 20, 1987

DGA Reserves the Right to Modify, Withdraw,
and/or Add to These Proposals

PROPOSAL/CLARIFICATION

CR-A

Amend the Basic Agreement to prohibit any material alteration of a motion picture after delivery of the answer print. Material alteration means, without limitation, coloring, time compression and expansion, panning and scanning, and changes to allow exhibition in 3D.

There are specific proposals concerning the definition of editing (Proposal CR-13a), editing for syndication (Proposal CR-13d), and time compression and expansion (Proposal CR-13a).

COLOR SYSTEMS TECHNOLOGY Inc.

cc

December 5, 1986

Mr. Elliot Silverstein
Chairman, President's Committee
Directors Guild of America, Inc.
7950 Sunset Boulevard
Los Angeles, Ca 90046

Dear Elliot:

I have given considerable thought to the point emphasized in your letter to me of November 26, 1986, particularly in view of my many years of studio and industry relationships with Directors and my own personal regard for their contributions to the production of motion pictures (as expressed in my November 25th letter to you). After due reflection and consideration, I am pleased to advise that (while of necessity reserving our legal rights and positions) Color Systems Technology is prepared to accept the DGA's entreaty for a consultation opportunity during CST's color conversion of feature films owned or controlled by our company.

We are prepared to accord the original Director of each such film a reasonable opportunity to be consulted and to provide input on color theme, color selection, concept, etc. and, moreover, we would use our best efforts for a similar privilege to be accorded the original Director of those black-and-white features owned by other parties and of which CST is only engaged to do color conversion. We would also welcome and desire the assistance of the Directors Guild of America in our contacts and communications with the Directors.

I am sure that the mechanics involved for such consultation can readily be agreed, especially by reference to such analagous conditions as apply, by way of example, to network editing of features (e.g., availability, conformity to production schedules, no additional costs, etc.)

4553 Glencoe Avenue, Marina del Rey, California 90292
(213) 822-6567 Facsimile: (213) 306-3925

We are anxious to hear from you at your earliest opportunity so that we can mutually and harmoniously implement this proposed arrangement.

Sincerely,

JOSEPH A. ADELMAN
Senior Vice President

JAA/jb

cc: Gilbert Cates
Michael Franklin

Directors Guild of America, Inc.

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REPLY TO
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General Counsel
ELLIOTT WILLIAMS

Dec. 11, 1986

Mr. Joseph A. Adelman
Senior Vice President
Color Systems Technology, Inc.
4553 Glencoe Avenue
Marina del Ray, California 90202

Dear Joe:

Thank you for your letter of Dec. 5, 1986.

Let me correct a misconception it reflects. The DGA has made no "entreaty for a consultation opportunity," unless that consultation includes the right to prohibit the computer coloring of the film. No such "entreaty" was expressed or implied in my letter which asked you simply to respond to a question which it seems to be difficult for you to answer; namely, if you were quoted correctly in the Argonaut article of Nov. 13, 1986 as saying:

> "When possible, surviving cast and crew members are also consulted in the colorization process,"

and if you included the Director, John Huston, in that description, why didn't you consult John Huston? If you were quoted incorrectly, the same question occurs to us. Why didn't you consult John Huston?

Because of all the emotion surrounding this issue and in particular the computer coloring by your company of THE MALTESE FALCON, it would be of some use in understanding your remarks as well as the policy of Color Systems Technology, Inc., if you were able to supply us with an answer to our question.

Best Regards,

ELLIOT SILVERSTEIN
Chairman President's Committee

ES/SG

cc: Gilbert Cates
Michael Franklin
Harry Evans
John Huston

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COLOR SYSTEMS TECHNOLOGY Inc.

December 22, 1986

Mr. Elliot Silverstein, Chairman
President's Committee
Directors Guild of America
7950 Sunset Boulevard
Los Angeles, CA 90046

Dear Elliot:

This is in reply to your letter to me of December 11, 1986.

I don't think that my reading of your letters of November 19th (to the Editor of The Argonaut) and November 26th reflected a "misconception". In both letters you repeatedly inquired why Color Systems Technology did not consult with Mr. John Huston in regard to the color-conversion of "THE MALTESE FALCON." And thus, my letter to you of December 5, 1986 was intended, in good faith, to set up future consultation opportunities and mechanics.

In regard to your specific question as to why CST did not consult with Mr. Huston during the color-conversion of "THE MALTESE FALCON" owned by Turner Entertainment Company, it is not legally proper for CST to initiate such consultation without being so directed by the film's owner. That is why we offered (in my December 5th proposal) to use our best efforts to obtain such consultation opportunity in the future from the third-party owners of the black and white features for which CST has contracted to do the color-conversion.

I trust that this clarifies the "policy" of Color Systems Technology and that I may hear further from you in regard to my December 5th letter.

Thank you.

Sincerely,

JOSEPH A. ADELMAN
Senior Vice President

cc: Gilbert Cates
Michael Franklin

4550 Glencoe Avenue, Marina del Rey, California 90292
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... Woodfield Road London W12 0TT Telephone 01 743 5588 or 01 576 2222 Telex 934613 or 265781 Cables Telecentre London

HOME ENTERTAINMENT

DD

2nd June 1988

Joseph A. Adelman
President
Color Systems Technology Inc.
4553 Glencoe Avenue
Marina Del Rey
CA 90292
U.S.A.

Dear Joe

I was very pleased to meet you and Charles last week. Many thanks for laying on the tour of the operation which I found absolutely fascinating.

Further to our conversation, I am enclosing VHS PAL copies of THE FORSYTE SAGA VOL I and WATCH WITH MOTHER which can be viewed in the Lionheart office (1762 Westwood Bld, Suite 320, Los Angeles 90024 (213) 470-3939 Contact: Maq Jawed). Our Copyright Department have confirmed that Turner have US television rights so you could raise the matter with your contact. We do not believe colorisation will affect the underlying copyright in the production although our consent would be required before the work is undertaken.

I do hope we can develop some projects together and will pass your showreel tapes around to see if any of my colleagues have any bright ideas.

With best wishes.

Yours sincerely,

David Risner
Head of Home Entertainment

Encl. 2 cassettes

BBC ENTERPRISES

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Casablanca in Color? I'm Shocked, Shocked!

From all the fuss, you would have thought it was a theft of the Elgin Marbles or the rape of the Sabine women. "Criminal mutilation," says Woody Allen. "Artistic desecration," says the Directors Guild of America. "Cultural vandalism," says the Western branch of the Writers Guild of America. Not since Ingrid Bergman was run out of town on a morals charge has Hollywood been in such a pious fit. Directors, actors, critics, even the odd editorialist, have risen as one to denounce the depredations of—colorization.

Colorization is the gimmick by which a computer and an "art director" team up to apply color to an old black-and-white movie. The colorizers, to their credit, have few pretensions. The idea is to make money. "People don't like black and white," says the president of Colorization Inc. "When we color it, they buy it."

The guardians of the culture are not pleased. The Screen Actors Guild, the American Film Institute and the American Society of Cinematographers have denounced the practice. John Huston has suggested a boycott of products advertised on TV showings of colorized movies. The Directors Guild is looking for legal ways to block colorization. Its British counterpart has simply called on the government to outlaw it. Conspiracy to colorize: three years to life.



To the guardians of the culture, seeing *Stagecoach* in anything but black and white would be painful indeed

Simple justice. Is not turning an elegant *film noir* like *The Maltese Falcon* to a lurid color riot a travesty? Like putting a mustache on the *Mona Lisa*?

Travesty, yes. Mustache, no. Colorizing leaves the original black-and-white prints unmolested. (In fact, they are rendered in mint condition before colorizing begins, which is why some film archivists like the idea.) Only a tape of the film is colorized. Nothing is altered. Colorization is not like painting a mustache on the *Mona Lisa*. It is like painting a mustache on cheap prints of the *Mona Lisa*. The original remains in the Louvre, pristine. Copies of the original, sans mustache, remain readily available. Where is the loss? What is the damage?

Not physical, admit the outraged. The damage is to art and to taste. Colorization turns art into junk.

Well, yes. The colors are dismal. The film is distorted. The director's intentions are trashed. It is true that most old films are junk anyway, so colorizing them would turn dank junk into juiced-up junk. It is also true that watching *Casablanca* for the chiaroscuro lighting rather than the dialogue is a bit like buying *Playboy* for the articles. The charge of philistinism is slightly overdrawn. But, on the whole, only slightly.

Nevertheless, it is not as if artistic intent is never compromised in pursuit of a wider audience. Hollywood has for decades tolerated dubbing. There is much money to be made in overseas markets. Dubbing spares unlettered foreigners the strain of subtitles. For the sake of a few deutsche marks, Hollywood is quite prepared to have Gary Cooper mosey up to a bar and say, "*Ein Bier, bitte.*" Colorization is, in principle, no more than visual dubbing for a generation that is deaf to black and white.

Grant, nevertheless, that colorization does turn art into junk. Our culture produces megatons of junk every year. Why not let the market decide? What's with the boycotts? If the colorized version is as bad as the critics claim, it will fail for good capitalist reasons. No one will watch it. When enough people lose enough money in any venture, it dies: 3-D died. At best (or worst), colorization might carve out a market niche for a small group of cultural illiterates, the video equivalent of Classic Comics.

Let the individual choose. Anyone can rent the black-and-white *Casablanca*. And even when the philistines insist on putting a tainted *Casablanca* on TV, all you have to do to restore artistic integrity is turn off the color on your set. Why the panic?

The critics are panicked that you won't turn off the color. They propose to do it for you. "It's a decision the public shouldn't be forced to make," says Critic Gene Siskel. The Minister of Culture could hardly have said it better, though some of the subtlety might be lost in translation from the Russian.

The critics' real fear is that colorization will win the market. Colorization will so corrupt tastes that people will lose their appreciation of the beauty of the black-and-white original. The original print will exist, but in a vault. In the culture it will die. Junk will drive out art.

"If colorizing is popular," writes the New York *Times's* Richard Mooney, "it will inevitably drive the original versions out of circulation." The sheer volume and, with improvements, prettiness of colorization will dull the taste, then the demand for the original. "What worries me," says Producer George Stevens Jr., "is that, psychologically, the films will cease to exist in black and white. The new version will replace the old in the public's mind." In short: the market shapes tastes; a corrupt market will corrupt tastes.

My, my. An industry that feeds teenagers three helpings of *Porky's* and six of *Friday the 13th* now complains about the corruption of tastes. But more than mere hypocrisy is at work here. There is a logic problem. For decades Hollywood has flooded the market with every conceivable variety of junk and then defended itself against the charge of degrading public tastes with a "Who, us? We just give them what they want." Tastes shape the market.

Except, it now seems, for colorization. Moreover, whenever bluenoses demand restraint against the porn and violence that are the staple of popular culture, they are met with "Who appointed you guardians of the public taste? Let the people decide. If they want junk, that's their prerogative. What did we fight two world wars for if not the right to buy *Penthouse* at the 7-Eleven?" But not, you see, for the right to rent a colored *Casablanca*.

Of course, the premise of the anticolorizing purists is correct. Even if *you* don't watch junk, the sheer weight of mass-produced junk, in the end, flattens and debases the culture and leaves you poorer. The market does shape demand. In a mass culture of such power, the very presence of junk corrupts, like secondhand smoke.

But if so, let the great black-and-white crusaders stand up and boycott and protect us from other debased and debasing junk in our culture. Otherwise, we have a right to conclude that they are not serious, just a bunch of effetes moved by nostalgia, snobbery and fear. A Puritan, goes the old joke, is a person who lives in mortal fear that someone somewhere is having fun. A Hollywood Puritan is a person who lives in mortal fear that someone somewhere is watching Ingrid Bergman blush red in Rick's Café.

—*By Charles Krauthammer*

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8/6/88

DGA's Position On 'Moral Rights'

Editor, *Daily Variety*:

After reading the Directors Guild of America response in *Daily Variety*'s Aug. 1 Forum to Motion Pictures Association of America prez Jack Valenti's July 20 remarks on electronic coloring, moral rights, and new legislation, I felt as if I had stepped into an "Alice In Wonderland" world in which all conditions were topsy turvy.

When will the DGA realize (or admit) that it's members are *employes*. As employes they relinquish control of their work when they accept payment for it.

Any DGA director member is free to negotiate an individual contract giving rights above the basic agreement, and several have done so because their services warranted these rights.

I understand the directors' frustration regarding their creative work and that of their predecessors. No one likes to see his work altered or mutilated.

I get annoyed too when my work is altered (usually by directors), but that's the nature of the business. My way of dealing with this is to decline to do directorial or creative work unless I know that I have positioned myself so that my work will not be mutilated.

I don't expect Congress to do this for me; it's something that I must do for myself — at the bargaining table.

My sense of all this is that the DGA is jockeying for power behind the shield of altruistic issues such as "moral rights" and "national heritage."

The ingeniousness of this approach (whether by design or by chance) is that if Congress can be manipulated, over time, to grant to a director-controlled (film preservation) board many of the rights of *management*, then the DGA eliminates the need to negotiate these same managerial rights at the bargaining table, and also avoids the danger of being declared "management" itself (and therefore decertifiable as a labor union).

The irony is that while the directors strive for federal "moral rights" legislation to protect the works of director members from "desecration" by those above them on the totem pole of power, the directors still maintain *their* right to deny moral rights to those who they consider to be below them, a sort of "moral elitism."

The right of individual negotiation, which is available to DGA members, is unilaterally denied to others in the industry by the DGA contract.

I have no problem with the concept of a federal moral rights provision for the arts so long as the directors don't define who should and shouldn't be entitled to these rights.

Let me put this as a question to the DGA: If Congress passes moral rights legislation, will the DGA do the same and return to other creative workers in the industry the right to negotiate with the producer for screen credits and conditions commensurate with their contribution, or will the DGA continue to usurp this "moral right?"

Jim Danforth
President, Effects Associates Inc.
Van Nuys, Calif.

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"INDEPENDENT SPIRIT" Spring '88
COMMENTS
S. Carolina Arts Commission

GG

A Case For Colorizing Black-And-White Movies

Robert Russett

Leaving aside the comments made about Ted Turner's money and personality, the major argument made against colorization is of an aesthetic nature. Specifically, the argument is that colorization distorts and defiles the emotional and artistic content of televised films. Such an argument constitutes a failure to understand what colorization is and more significantly what stands to be gained by developing and using this new form of technology.

First of all, it is important to recognize that colorization is done on video tape. Original prints and negatives are not affected; black-and-white films, therefore, will continue to exist and will be available to anyone who wishes to view them. So it is wrong to suggest, as many critics do, that colorization will literally damage or destroy the actual films.

But the root cause of the controversy is the inability of those who are opposing colorization to make a clear distinction between the inherent qualities of projected film and the type of imagery that is generated when a motion picture is electronically transmitted. When film is shown on television, it is converted to another medium and becomes an entirely different kind of viewing experience. There is an obvious difference between watching a film in a theater and looking at one on television. The critics of colorization, however, never mention this technological transmutation. Indeed, they suggest that television transmission has no substantial effect on the form and content of the film, unless of course, it is tampered with by Colorization, Inc. under the auspices of Ted Turner.

The inconsistency of their position raises some serious questions about their expressed desire to preserve in a pure and unaltered condition, the presentation of films as they were originally intended to be seen. It also raises questions about the reasons for their indignation and perhaps even about the sincerity of their motives. How can movie makers be so upset about colorization and yet be seemingly oblivious to the audio and visual changes, and the subsequent loss of filmic quality, caused by the general practice of televising motion pictures? How, for example, can these so-called film purists object to colorizing *The Maltese Falcon* on the one hand, but on the other hand condone the televising of a film like David Lean's Academy Award-winning *Lawrence of Arabia*?

In its theatrical form Lean's classic is a wide-screen high-definition picture of projected light, accompanied by the full fidelity of stereophonic sound. A televised version of *Lawrence of Arabia* totally transforms this large-scale environmental experience. The original form of the film, as it was envisioned by Lean, is changed into a low-definition tissue of electrons, usually about twenty inches wide and accompanied by monophonic sound over a three-inch speaker.

But this loss of resolution, color quality, sound, and image size, important as it may be, is not the only factor to be considered. What about the millions of black-and-white T.V. sets still being used in many American homes that receive this color film and eliminate its beautiful chromatic tones? Why have the critics of Ted Turner spoken out so angrily against colorization, but not against decolorization? The black-and-white transmission of color film dates back to the beginning of television. In fact, not only is there a history of color films being shown on black-and-white T.V. sets, but for years, film distributors in a move to reduce rates leased black-and-white prints of color films to local T.V. stations.

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Yet despite the many aesthetic changes rendered by the commerce and technology of television, film makers have angrily focused all of their attention on colorization, denouncing it as a money-making scheme that threatens the artistic integrity of Hollywood movies. Woody Allen sees colorization as "mutilating a work of art and holding the audience in contempt." How does Allen feel about the decolorization of films shown on television (including some of his own), and on top of that the periodic interruption of their narrative continuity with commercial advertisements? Apparently he approves since he is willing to accept the financial rewards for permitting his films to be shown; but his position is clearly inconsistent with his professed commitment to artistic integrity. Like other movie makers who are busily protesting colorization, Allen's view is overdrawn, spurious, and far too sanctimonious. .

To put colorization in proper perspective there is a need to question the nature of television viewing and specifically the electronic transmission of motion pictures. At the center of the controversy is a misreading of media by the opponents of colorization that, perhaps in part, can be attributed to a lack of objectivity and professionalism. Disgusting film makers and film critics often seem more upset by Ted Turner's use of power and the fact that he and not the movie industry stands to make a great deal more money than they are by the alleged adverse effects of colorization. In any case, opponents of colorization fail to recognize, or refuse to admit, that when film is transposed to television its fundamental qualities are significantly altered. The only way to experience film in its pure and original form is to see it projected in a movie theater. When film is televised, it becomes an electronic image and its inherent standards of definition, color, and tonality are no longer relevant. It has, in effect, been transfigured, consigned to a different visual sphere which has its own essential characteristics as well as a potential for creating entirely new kinds of viewing experiences.

Although still an evolving process, colorization and its many applications have been and will continue to be an important resource in electronic imaging. A form of colorization, for example, has already been acclaimed for its use in the restoration and enhancement of technicolor films such as *Friendly Persuasion* and *State Fair*. Electronically infused by fresh color sensations and the computer-corrected video tapes of these movies have been made compatible with television and look richer and more vivid than any film version currently available. Although at this stage of development, the application of color to black-and-white films is more problematic, there is no legitimate reason why attempts should not be made to add new levels of information and artistic meaning to monochrome film classics. In art forms other than film, there is widespread approval for the use of existing works in new ways. In theater and music, for example, it is common practice to make contemporary adaptations from older plays and musical compositions. Indeed, many feature films including some of the black-and-white classics that movie purists want to preserve, are based on novels and have in effect "colorized" literary form. The interpretation, transformation and regeneration of older art works have a long and distinguished tradition and colorization offers this venerable approach still more creative possibilities.

How long it will take colorization to become a highly sophisticated and refined technique is at the moment an open question, but the development and use of its transformative powers is inevitable. Motion picture films are being subsumed by the medium of television and the colorization of black-and-white movies represents the next logical step in the total scheme of this evolutionary process. Colorization is capable of taking disembodied films, that have been cut loose from their original form by advanced technology, and relocating them in a new visual dimension which has its own distinct standards. Not until the full implications of this electronic procedure are understood by the disgruntled opponents of colorization can a serious discussion begin about the aesthetic consequences of adding color to black-and-white films.

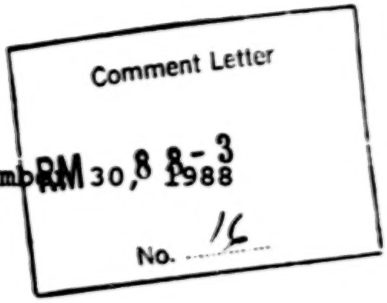
Robert Russett is an independent filmmaker whose work has been screened at the Whitney Museum's New American Filmmaker Series, the New York Film Festival, the Oberhausen Film Festival and the G. Pompidou Center. He has, with film writer Cecile Starr, co-authored a book, EXPERIMENTAL ANIMATION: AN ILLUSTRATED ANTHOLOGY. Russett is professor of art and media studies at the University of Southwestern Louisiana.

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National Association of
NAB
BROADCASTERS

S. Keith Townsend

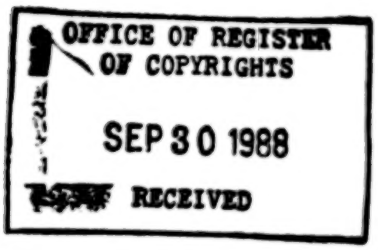
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September 30, 1988

HAND DELIVERED

William Patry, Esquire
Office of the Register of
Copyrights
Copyright Office
James Madison Memorial Building
Room 403, First and Independence
Avenue, S.E.
Washington, D.C. 20559



Re: Docket No. RM 88-3

Dear Mr. Patry:

Pursuant to our conversation on September 19, 1988, permitting the filing of NAB's Comments at this time, enclosed please find 10 copies of NAB's response to the Notice of Inquiry and Request for Comments in Docket No. RM 88-3.

Sincerely,

Keith

Enclosures

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Before the
Library of Congress
Copyright Office
Washington, D.C. 20559

In the Matter of	)	
	)	
Request for Information;	)	Docket No. 88-3
Notice of Hearing, New Technology	)	
and Audiovisual Works	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION

The National Association of Broadcasters ("NAB") 1/ hereby files comments in response to the request for information regarding the impact of new technology on audiovisual creations. 2/ NAB believes that current law should not be interpreted or revised to create a result whereby proprietary interests in audiovisual works are provided to those who have not otherwise expressly retained a copyright interest in, or contracted for such interests. The passage of proposed legislation 3/ to create such noneconomic

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1/ NAB is a nonprofit incorporated association of radio and television broadcast stations and networks. NAB membership includes more than 5000 broadcast radio stations, 940 television stations and the major commercial broadcast networks. NAB members, through licensing agreements, secure the right to broadcast colorized motion pictures and other films and syndicated programming requiring editing for commercial broadcast use.

2/ 53 Fed. Reg. 18937 (May 25, 1988).

3/ See, e.g., H.R.2400, 100th Cong., 1st Sess., 133 Cong. Rec. E. 1922 (daily ed. May 13, 1987) ("Film Integrity Act of 1987"); S.1619, 100th Cong., 1st Sess., 133 Cong. Rec. S13,245 (daily ed. Aug. 6, 1987) ("Visual Artists Rights Act of 1987"); H.R.3221, 100th Cong., 1st Sess., 133 Cong. Rec. H 7352 (daily ed. Aug. 7, 1987)("Film Integrity Act of 1987").

or artistic rights in persons who collaborate in the artistic effort to create motion picture or television programming will likely have the unintended effect of stifling the creative process, resulting in fewer and fewer works being created or displayed, to the detriment of the public interest.

II. THE FUNDAMENTAL PURPOSE OF COPYRIGHT IS TO PROTECT THE PUBLIC INTEREST IN HAVING ACCESS TO THE FRUITS OF THE CREATIVE PROCESS

The fundamental tenet of American copyright law is that the public, rather than the author, is to be the ultimate beneficiary of the limited monopoly granted to the author of creative works. This view is embodied in Article 1 § 8 of the Constitution which empowers Congress "[t]o promote the progress of science and the useful arts, by securing for limited times to authors 4/ . . . the exclusive right to their . . . writings and discoveries . . . ." In Twentieth Century Music Corp. V. Aiken, 422 U.S. 151, 156 (1974), the Supreme Court, in interpreting the balancing of public versus private interests, stated:

> The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims on the public interest. Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music and the arts. (emphasis added).

4/ The term "author," in its constitutional sense has been construed to mean an "originator," or "he to whom anything owes its origin." Goldstein v. California, 412 U.S. 546, 561 (1972) (Burger C. J.)(quoting Burrow-Gilles Lithographic Co. v. Sarony, 111 U.S. 53, 57-85 (1884).

In support of the supremacy of the public interest over private motivations, the Court in Sony Corp., v. Universal City Studios, Inc., 464 U.S. 417, (1984) stated that "The copyright law, like the patent statutes, makes reward to the owner a secondary consideration . . . . The sole interest of the United States and the primary object of conferring the monopoly lie in the general benefits derived by the public from the labors of authors." Id. at 429. The Court also recognized that copyright law has and must continue to evolve in response to the changes in technology that give rise to the need for copyright protection. Id.

A primary example of the evolution of copyright law in response to changing technology has been the Copyright Office's recognition of a copyrightable interest for those who create derivative works, through the colorization process, of programming 5/ originally produced in black-and-white. One salutory result of the Copyright Office's willingness to provide copyright protection for derivative colorized versions of black-and-white programming is that a whole new generation of viewers is now enjoying films and television programming originally produced in black-and-white that heretofore was not being exhibited because it was not economically profitable to do so.6/ Moreover, through

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5/ Original black-and-white programming includes films as well as television programs not recorded in color.

6/ See, Duggan and Pennella, The Case for Copyrights in "Colorized" Versions of Public Domain Films, 34 J. Copyright Soc'y of the U.S.A. 333, 379 (1987). ("The process of colorization ... promises to revitalize thousands of works which might otherwise remain largely neglected by future generations," due to economic forces of the market).

the colorization process, black-and-white films are being restored, and indeed the preservation of original color programming is made possible, 7/

NAB, therefore, supports the use of technology that enhances the public availability and display of once forgotten programming.

III. THE PUBLIC INTEREST SHOULD NOT BE SUBVERTED TO PROVIDE NONECONOMIC RIGHTS TO THOSE WHO HAVE NOT BARGAINED FOR THEM

The director or artist involved in the collaborative effort to create a vision through film can no more be said to retain rights in a work created under a work for hire contractual arrangement 8/ than an assembly line worker involved in the process which leads to the production of durable goods. The employer under American copyright law, absent some contractual agreement limiting the employer's ownership and right to exploit for pecuniary gain the product created, is the owner of the copyright

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7/ The process of colorizing film begins with the transfer of the original black-and-white film to videotape. Prior to transferring the film to video tape, the original black-and-white film is restored. It is only the copy which is colorized. See Duggan and Pennella, supra note 6 at 336-341; See also, Durie, Colorisation of Films, 10 Eur. Intell. Prop. Rev. 37 (1988)(explaining the copyrightability of "colorised" films under British law).

8/ See Note, A Film of a Different Color, Copyright and the Colorization of Black and White Films, 5 Cardozo Arts & Ent. L.J. 497, 531 (1986) (productions are usually prepared under work made for hire where the studio or producer provides financing, equipment and facilities, while being responsible for distribution of the movie or television program).

in the work created. 9/

Judicial decisions have long rejected the concept of "moral rights" 10/ when resolving contractual disputes between artists and the holder of copyrights in work involving the artist. In cases in which the question of moral rights has been raised, the courts have rejected the concept where an agreement between the parties establish that the artist had contracted away his interest in the work created.

For example, in Geisel v. Poynter Products, Inc., 295 F.Supp. 331 (S.D.N.Y. 1968), the court refused to apply the doctrine of moral rights, preferring instead to apply principles of contract law to resolve a copyright ownership dispute. In

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9/ Baltimore Orioles v. Major League Baseball Players, 805 F.2d 663, 667 (7th Cir. 1986) cert. denied, 107 S.Ct. 1593, 94 L.Ed.2d 782 (1987). Currently, there is a split in the federal circuits over the work made for hire definition as it applies to works created in the scope of employment and contributions to specially commissioned works or work used, for example, in motion pictures, especially as it applies to independent contractors. Compare Evans Newton Inc. v. Chicago Systems Software, 793 F.2d 889 (7th Cir. 1986) and Aldon Accessories Ltd. v. Spiegel, Inc., 738 F.2d 548 (2nd Cir. 1984), where the courts have held that sufficiently controlled independent contractors may be deemed employees for work for hire purposes, with Easter Seal Soc. v. Playboy Enterprises, 815 F.2d 323 (5th Cir. 1987), and Community for Creative Non-Violence v. Reid, 846 F.2d 1485 (D.C. Cir. 1988), where the courts have held that employees and independent contractors are, by definition, different for purposes of determining copyright ownership.

10/ Although labeled as moral rights, any effort to give those involved in the creative process a statutory veto over the exploitation of copyrighted works through the enactment of legislation, or through modification of existing copyright, trademark, or other statutes, where they do not retain by contract or copyright an artistic or proprietary interest in the work at issue, would create a legal right enforceable by judicial order should a cause of action under the statutory provision be established.

Jaeger v. American International Pictures, Inc., 330 F.Supp. 274 (S.D.N.Y., 1971), the court in reviewing the contractual arrangements between the parties found the agreement established that the artist had contracted away rights dealing with the showing of an edited version of a motion picture. In a similar case, the court in Landon v. Twentieth Century Fox Film Corporation, 384 F.Supp. 450 (S.D.N.Y. 1974), held that a contractual provision gave the film company the right to create derivative works.

These decisions and industry practice reflect a fundamental belief that parties may contract to transfer all or part of their rights in artistic creations, 11/ and having done so, the judicial system is the proper forum to resolve any dispute regarding the ownership of such rights, including the ownership of copyrights.

Moreover, because the creation of motion pictures involves an expensive collaborative effort, requiring the producer to expend tremendous sums of money on a risky, speculative business decision, 12/ many films often do not recoup the financial investment of the producer.13/ Also, artists' rights may be

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11/ See Verbit, Moral Rights and Section 43(a) of the Lanham Act: Oasis or Illusion?, 9 Comm/Ent. L.J. 374,416-417 (1987) ("in the business world of film production artists' . . . rights may be contracted away.")

12/ See H.L. Vogel, Entertainment Industry Economics, 1,89 (1986) ("In no other business is a single example of product fully created at an investment of millions of dollars with no assurance that the public will buy it.").

13/ Id. 84. ("Many, if not most, films do not earn any return even after taking account of new media revenue sources; it is the few big winners that pay for the many losers. This is especially

subject to limitations in collective bargaining agreements which give final artistic approval to the producer. 14/ Should the director or artist retain control over the final cut of the film, he may not retain any rights regarding the subsequent distribution of a edited version of the film for television. When a dispute develops over an agreement to produce a creative work, then the courts, not Congress, should resolve the contractual matter.

III. EUROPEAN EXPERIENCE WITH ARTISTIC VETO OVER THE DISPLAY OF COPYRIGHTED MATERIAL

The general thrust of rights granted to artists in the European community, which vary from country to country, is distinctly different than that which exists in the United States. Under the concept of droit d'auteur, 15/ the director is considered

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true for . . . investors who, in terms of the funds flow sequence, are usually among the first to pay in and the last to be paid out."; See also, Howie, The Effect of the Tax Reform Act of 1986 on Motion Picture Financing, 12 Colum J.L. & Arts 307, 317 n.55 ("Prior to 1976, as many as seven out of ten films lost money at the box office.").

14/ See DIRECTOR'S GUILD OF AMERICA, INC., MINIMUM BASIC AGREEMENT OF 1984, art. 7, §§ 505 & 1502, at 48 & 51. Section 7-505 refers to the Director's Cut. "The Director shall prepare the Director's Cut of the film for presentation to the individual Producer and to the person designated . . . as having final cutting authority, in the ordinary course of business, over the motion picture." Id. at 48 (emphasis added). Also, § 1500 expressly states, "The Employer's decision in all business and creative matters shall be final." Id. at 59 (emphasis added).

15/ Unlike in the U.S., the term author is not defined. See Final Report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention, infra, note 23. The World Intellectual Property Organization explains that Berne:

> speaks of "the rights of authors in their works" but does not define the word "author" because on this point . . . national laws diverge widely, some recognizing only natural persons as authors, while others treat certain legal entities as copyright owners, some imposing

to be the creator of the film and retains certain noneconomic rights regardless of whether the director retains a proprietary interest in the work through copyright or contract. This concept of droit moral, or moral rights incorporates four principles:

> (1) the right of paternity, which allows the author to have his name attributed to his work, and to forego attribution for works not involving the author; (2) the right of integrity entitles the author to prohibit any distortion of his work; (3) the right of disclosure, which permits the author to determine when the work can be displayed to the public; and (4) the right of withdrawal, which allows the author to remove the work from public display.16/

In addition to these rights, some European countries recognize the concept of droit de suite. The droit de suite secures to artists a percentage of the increase in value of a work whenever it is resold.17/ In essence, droit de suite is analogous to royalties provided to authors by virtue of their ownership of federal copyrights in their works. 18/

The Berne Convention, an international agreement for the protection of authors' and artists' rights provides for droit moral as follows:

> (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other

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> conditions for the recognition of authorship which others do not accept. Id at 614.

16/ See Note, Artists' Rights in the United States: Toward Federal Legislation, 25 Harv. J. on Legis. 154, 155-156 (1988).

17/ Id. See Arnold, Towards a Performers' Copyright: An Analysis of Rickless v. United Artist, 9 Eur. Intell. Prop. Rev. 97 (1987) (argument in favor of codifying the right of publicity into a statutorily protected copyright under British law).

18/ See Note 16, supra at 157.

> modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
>
> (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
>
> (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886 (Paris Revision 1971) Art. 6 bis

But, however, this moral right is tempered by the following from Art. 14 ter which provides:

> Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed . . . . However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts of the work.

The Berne Convention also contains a provision embodying the concept of droit de suite:

> (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation. Id., Art. 14 ter, at 11-12.

These concepts represent a belief in civil law countries that such rights are grounded in the natural law notion that a work of art is unique to the creator and is a part of his or her personality.19/ As such, it is believed that, an artist should not be forced to sever their relationship to their work merely because it is sold. Thus, it is argued, that artists should have control over their work, regardless of who owns the copyright.20/

IV. THE PURPOSE OF DROIT MORAL IS DIAMETRICALLY DIFFERENT FROM THAT OF AMERICAN COPYRIGHT PROTECTION

Often overlooked however, by those seeking to establish droit moral and droit de suite in the United States is the fundamental difference between the purpose of granting copyrights in the United States and the purpose of granting moral rights in European countries. As previously discussed, the purpose of granting limited monopolies to authors under copyright law is to stimulate creativity, primarily for the benefit of the public. Contrarily, moral rights are granted solely for the benefit of the author of the work, regardless of whether the author retains

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19/ See Note, A Film of a Different Color: Copyright and the Colorization of Black and White Films, 5 Cardozo Arts & Ent. L.J. 497, 528 (1986).

20/ Id. at 528.

a copyright or contractual interest in the work.[21/]

Thus, to adopt a statutory droit moral and droit de suite [22/] would frustrate the purpose and intent of Art. 1 § 8, and would thereby render the rights granted under the Copyright Act illusory. In 1986, the Ad Hoc Working Group on U.S. Adherence to the Berne Convention concluded:

> Given the substantial protection now available for the real equivalent of moral rights under statutory and common law in the U.S., the lack of uniformity in protection of other Berne nations, the absence of moral rights provisions in some of their copyright laws, and the reservation of control over remedies to each Berne country, the protection of moral rights in the United States is compatible with the Berne Convention. [23/]

This conclusion was based on the belief that existing copyright protection, where the right is retained by the author, [24/] Section 43(a) of the Lanham Act [25/] and permissible

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21/ See, Phillips, The Berne Convention and the Public Interest, 9 Eur. Intell. Prop. Rev. 108 (1987) (suggesting that Berne provides no public interest component, but acknowledging that copyright and trademark protection should not be used to prevent the dissemination of creative works to the public.)

22/ Although not applicable to motion pictures, S.1619, as amended, eliminated the artists' right to royalties upon resale of any visual art, in favor of a study of the issue. See 36 Patent, Trademark & Copyright Journal (BNA) 378-379 (1988).

23/ Final Report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention, 10 Colum. - VLA J.L.& the Arts 513, 547 (1986). Legislation to impliment Berne into law has been introduced. See e.g., H.R.4262 ("Berne Convention Implementation Act of 1988").

24/ Section 106 of the 1976 Act provides the following rights to the copyright holder:

> (1) to reproduce the copyrighted work in copies or phonorecords;
> (2) to prepare derivative works based upon the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

state law claims 26/ provide equivalent protection to an author analogous to the protection received by authors under the Berne Convention. 27/

NAB believes that enactment of moral rights legislation

---

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

17 U.S.C. § 106.

25/ 15 U.S.C. 1125(a)(1982) provides in part:

[a]ny person who shall affix, apply, or annex, or use in connection with any goods, . . . any false description or representation, including words or other symbols tending falsely to describe or represent the same . . . shall be liable to a civil action . . . by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

26/ 17 U.S.C. § 301(a)(1982) preempts all equivalent state law rights claimed in any work within the subject matter of copyright whether or not the work embodies any creativity. Thus so long as a state cause of action contains elements such as an invasion of privacy or a breach of trust or confidentiality, that are different in kind from copyright infringement, the state law claim is permitted. Baltimore Orioles v. Major League Baseball Players, 805 F.2d 663, 667-68 n. 26 (7th Cir. 1986) cert. denied, 107 S.Ct. 1593, 94 L.Ed.2d 782 (1987).

27/ The Copyright Office has supported the implementation of such legislation, with the view that the U.S. need not adopt specific moral rights to adhere to Berne. This "minimalist" approach ensures that the intent and purpose of U.S. Copyright law promotes creativity for the public interest. Statement of Ralph Oman, Register of Copyrights before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Committee on the Judiciary, 100th Congress 2nd Sess., June 1988 at p. 2.

law would frustrate the purpose of copyright protection, which is to stimulate the creative vitality of artists to produce works for the benefit of the public. Moreover, such legislation is unnecessary because existing law protects the noneconomic interests of artists in the works they create.

V. FEDERAL LEGISLATIVE ACTION TO CREATE A STATUTORY MORAL RIGHT IS UNNECESSARY AND WOULD BE BURDENSOME ON BROADCAST LICENSEES IF ENACTED

NAB supports the use of technology that enhances the widest possible public dissemination of revitalized programming. In fact no other art form is so dependant on expanding technology. As one commentator has expressed "our technological century has produced an art that depends on technology."28/ Still another commentator has noted the importance of technology on the development of this art form when stating "[i]f the artistic and historical development of film and television are to be understood, then so must the peculiar marriage of art and technology which prevails in their operation. It is the involvement of twentieth-century technology which renders these media so unlike the other, older arts."29/

Given the restrictions inherent in broadcasting, licensees must use technology to edit 30/ motion picture programs

---

28/ See G.Mast, A Short History of the Movies 1, 6 (1976).

29/ See H.L. Vogel, Entertainment Industry Economics, 1, 33 (1986).

30/ See Belton, Pan & Scan Scandals, 3 The Perfect Vision 40 (1987). Processes are used in television to conform films to television and to permit the insertion of commercials into the program when broadcast. Editing involves the process of shortening a film for television presentation and/or removing material

and made for television programming not only to conform the programming to the peculiarities of the smaller screen, but also because of the limitation on program content which can be broadcast over the airwaves. The Communications Act of 1934, as amended, makes broadcast licensees generally responsible for all material they broadcast, and empowers the Federal Communications Commission ("FCC or Commission") to impose administrative sanctions 31/ for violations of the criminal code, which provides: "[W]hoever utters any obscene, indecent or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both." 32/ Recently, the Commission has reaffirmed 33/ its commitment to ensuring compliance with the Supreme Court decision in FCC v. Pacifica, 438 U.S. 726 (1978) which held that the FCC had the authority to regulate the broadcasting of indecent programming.

Under the circumstances, the broadcaster is faced with a dilemma. First, proposed legislation has not defined what amount of editing would constitute a mutilation of the work to constitute

---

prohibited under Federal Communications Commission rules. Time compression is a new technology which permits the film speed of a program to be slightly increased to permit the insertion of additional commercials. Panning and scanning involve recompositioning widescreen films for presentation on television screens. Id. at 42.

31/ 47 U.S.C. §§ 312(a)(6), 503(b)(1)(D) (1982).

32/ 18 U.S.C. 1464 (1982).

33/ In re Infinity Broadcasting Corp. of Pennsylvania, 64 Rad. Reg. (P&F) 211 (1987), aff'd in part, Action for Childrens Television v. FCC, No. 88-1064 (D.C. Cir. filed July 29, 1988).

a violation of a statutory moral right. Secondly, to avoid potential problems associated with the editing process, the licensee would have to secure the permission of whomever is designated under the law as being entitled to exercise a statutory veto over the editing process. To ensure the moral rights of the artist, the broadcaster would be under an obligation to telecast the program in a manner consistent with the view of the artist. A failure to do so would violate the artist's moral rights. But, on the other hand, the broadcaster could face administrative and criminal sanctions for broadcasting a program which violates the statutory law against broadcasting indecent programs, should the artist insist that certain scenes or language must appear in the edited version. The broadcaster would be faced with not broadcasting the program at all, thereby depriving the public of programming. Moreover, as has been recognized, "[a]dvertising is the basis for the commercial broadcasting system.."[34/] An inability by the broadcaster to insert commercials into the program or to compress the program to conform it to the limits of television technology, absent some agreement with the artist, would make it commercially unprofitable to show such programs not supported by advertising.

The effect would be the end of commercial television as we know it today. NAB believes that this unintended result must be avoided, or the public may be left with but one choice, namely pay-per-view programming.

34/ 1974 Report and Policy Statement, 50 F.C.C.2d 1, 11 (1974).

VI. CONCLUSION

The artistic endeavors of authors are fully protected under existing law. Any effort to create a statutory moral right for authors or others involved in the production of programming would fundamentally change the purpose and intent of copyright law, namely to provide incentives to authors to create works for dissemination to the public. In resolving the issues in this proceeding, the public interest should be paramount. As Justice Holmes stated:

> It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, . . . for if they command the interest of any public, they have a commercial value,--it would be bold to say that they have not an aesthetic and educational value,--and the taste of any public is not to be treated with contempt.[35/]

NAB believes that the effect of granting copyright protection to a colorized film or any derivative work, while imposing a statutory veto over its dissemination to the public would render the copyright illusory.[36/] The public should be the final arbiter of the aesthetic quality and commercial value of

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35/ Bleistein v. Donaldson, 188 U.S. 239, 251-252, 23 S.Ct. 298, 300-01, 47 L.Ed. 460 (1903); See also, Brandir Intern. Inc. v. Cascade Pacific Lumber Co., 834 F.2d 1142, 1145 (2nd Cir. 1987).

36/ Recently passed legislation creating a national film registry which will require labeling of films which are altered for public display. National Film Preservation Act of 1988, Pub.L. No. 100-446, signed by President on September 27, 1988. This labeling provision provides the public with information about a product so that the public can make an informed choice, without impinging on the rights of the copyright holder under the Copyright Act.

works of art. Therefore, NAB opposes amending existing law to provide artists with statutory moral rights.

Respectfully submitted,

NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036

Henry L. Baumann

Keith Townsend
Counsel

September 30, 1988

MORALITY IN MEDIA, INC. 475 RIVERSIDE DRIVE, NEW YORK, NY 10115 (212) 870-3222

Comment Letter

RM 88-3

No. 17

September 28, 1988

Ralph Oman
Register of Copyrights
Library of Congress
First and Independence Ave., SE
Washington, DC 20540

Re: Impact Of "Moral Rights" Legislation On Enforcement Of Obscenity Or Indecency Laws

Dear Mr. Oman:

At the request of Congressman Robert Kastenmeirer, your office conducted a recent hearing aimed at probing the need for a "moral rights" law to protect motion picture films from "mutilation" by new technologies such as colorization.

We are concerned about the impact that such a law would have on editing changes to comply with existing constitutional laws proscribing obscene or indecent material.

We understand the concern of Charles Warn, spokesman for the Directors Guild of America, who recently stated: "The Directors Guild feels strongly that audiences have a right to see films as originally made, and moreover, the artists have a moral right to have them seen in their original form" (N.Y.C. Tribune, 9/1/88).

While such rights and concerns are indeed important, however, they are not absolute. There is also a "right of the nation and of the states to maintain a decent society." [Paris Adult Theatre I v. Slaton, 413 U.S. 49, at 58 (1973).] This latter right finds expression in constitutional laws proscribing the dissemination of obscene material and the broadcast of obscene or indecent language. Artists should fully expect that deletions will be made to a motion picture film or other work if necessary to comply with these constitutional obscenity or indecency laws. The United States government does not have responsibility to protect works from the reach of such laws, and Gilliam v. American Broadcasting Companies, Inc., 538 F.2d 14 (2nd Cir. 1976) is wrongly decided to the extent it is deemed to hold otherwise. In Gilliam, the Second Circuit erroneously concluded that the American Broadcasting Company (ABC) should not be free from a claim of infringement of a common law copyright for broadcasting a recorded program which ABC had edited to comply with 18 U.S.C. 1464, the federal broadcast indecency statute. "The copyright law should be used to recognize the important

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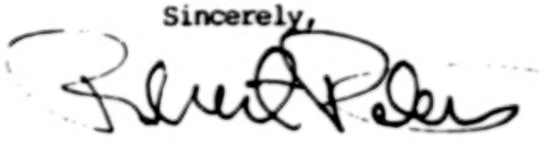
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role of the artist in our society...by providing adequate legal protection for one who submits this work to the public," opined the Court of Appeals.

Any attempt to amend the Copyright Act to provide recognition of the so-called droit moral, or moral right of authors, must also recognize the interest of the public in the quality of life and the total community environment, in regulating the exposure of obscene or indecent material to youth and unconsenting adults, and in the preservation of moral standards. [See, e.g., Paris Adult Theatre I v. Slaton.]

We urge that any proposed "moral rights" bill include a provision exempting from its coverage editing changes made to comply with applicable obscenity or indecency laws.

Sincerely,



Robert Peters
Attorney

RP/zb

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Comment Letter
RM 88-3
No. 18

OFFICE OF REGISTER
OF COPYRIGHT
SEP 22 1988
RECEIVED

AMERICAN FILM TECHNOLOGIES, INC.

LOS ANGELES
SAN DIEGO
NEW YORK
WAYNE, PA

BERNARD WEITZMAN
President, Chief Operating Officer

September 13, 1988

Mr. Eric Schwartz
Policy Planning Advisor
Register of Copyrights
Copyright Office
Library of Congress
Washington, D.C. 20559

Dear Eric:

It was a great experience to have participated in the copyright meeting of September 8th. Thank you for all your help and for making it all possible.

My thanks also to Bill Patry for his intelligent questioning and understanding of the entire colorizing-spanning and panning issue, which I hope you will be able to convey to the Kastenmeier committee. The logic of our position for the benefit of the public is something that I think will now be greatly understood because of your efforts on everyone's behalf.

I am completely amazed at how perceptive your panel was as to the issues and the questions you asked based on the presentations of the parties. It was a joy to watch such an intelligent government agency in action. I hope that I have an opportunity in the future to participate with you again.

Pursuant to our conversation herewith enclosed are two copies of the Spectrum article that we discussed.

Best regards.

Sincerely,

Bernard Weitzman

BW:rb
Encl.

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IEEE
SPECTRUM

The silver screen blossoms into color

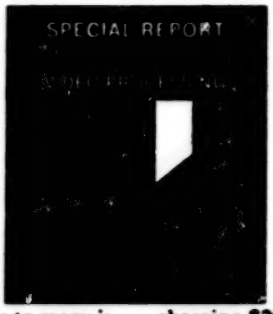
Like it or not, old favorites like The M[redacted] Falcon *are being colorized; here's how it's done*

Read what IEEE Spectrum magazine says about American Film Technologies in its August 1987 issue.

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The silver screen blossoms into color

Like it or not, old favorites like The Maltese Falcon *are being colorized; here's how it's done*



It has become an industry overnight. The technique of adding color to black-and-white movies, first done by computer only a few years ago, is now practiced daily by hundreds of colorists at four companies in the United States and Canada.

Nearly everyone has an opinion on whether computer artists should be allowed to add color to films from the black-and-white era. The debate peaked in May when such Hollywood notables as Woody Allen and Ginger Rogers voiced their firm opposition at U.S. Senate hearings. But what is an emotional issue to many is to its practitioners simply a matter of making a profit by putting the latest in technology to work.

Two of the four companies—Colorization Inc. of Toronto and Color Systems Technology Inc. of Marina Del Rey, Calif.—have together released more than 30 feature films so far. The two newer companies—American Film Technologies Inc. of San Diego, Calif., and Tintoretto Inc. in Toronto—have completed only segments of films. All four have been attacked for bastardizing the classics. But they are not transforming film illegally in garage shops; they are operating under contracts with such film owners as 20th Century-Fox, Turner Entertainment, and Hal Roach Studios, which can't get their old films pigmented fast enough. Colorized movies are selling well; videocassette sales of *It's a Wonderful Life*, distributed in color by Hal Roach in 1986, have already topped $1 million.

Videocassettes for home viewing have been the primary sales vehicle for the film owners, but revenues from sales of rights for television broadcasting are on the rise. The colorizing companies, in turn, are charging $200 000 to $400 000 per feature film. While each has exclusive contracts with various studios that own films, most of the 20 000 or so black-and-white films in existence are not covered by current contracts.

While the companies speak with a unified voice in public debates for mutual protection, they argue among themselves about whose colorizing is more realistic and whose process is faster. Colorization Inc., Color Systems, and American Film use very different colorizing techniques and computer technology. (Tintoretto, which was spun off by Colorization employees in 1986, uses a technique similar to that at Colorization.) Improvements in quality, which executives at the companies conceded was not the best at first, are a key factor in winning over the public and bolstering

Mark A. Fischetti Associate Managing Editor

The great debate

Whether or not entrepreneurs have the right to colorize black-and-white movies was debated extensively last May, at hearings of the U.S. Senate Judiciary subcommittee. The question of legality was quickly resolved; like any other owner of property, the owner of a movie is legally free to do what he wants with it.

When films are released, it is common practice for producers and directors to obtain copyrights, valid for 28 years. Although the copyrights are renewable, they have been allowed to lapse for most older films, because there was no apparent demand for them. When a copyright expires, all rights revert to the owner of the film. "But now that the producers and directors are seeing us sell their old movies, they are mad because they're not getting any residuals," charged Colorization Inc. president Wilson Markle.

Rather than contesting the legality, the Directors Guild of America has protested colorization on the grounds that its members' works of art are being tampered with. Proponents of colorizing counter that the original film remains untouched; all work is done on videotape copies.

Since no legal issue was found, the Senate hearings quickly turned to subjective considerations. Producers and actors testifying at the hearings, including Woody Allen, John Huston, Jimmy Stewart, and Ginger Rogers (she on behalf of the Screen Actors Guild) defended black-and-white films as an art form, meriting the preservation granted to historical buildings or national landmarks. They also voiced fears that colorizing will encourage further forms of revisionism, such as alterations of sound tracks.

The colorists' position is that they are simply offering the public an option; those who prefer the black-and-white can simply turn down the color control on their television set. The colorists argued that while most of the old films had gone out of circulation because of waning viewer interest, the colorized versions are pulling in large audiences. Therefore, they maintain, the creators should be grateful for the additional interest.

Nonetheless, legislation was introduced in the U.S. House of Representatives in May that would give film directors and screenwriters the final say on whether their films can be altered, regardless of who has copyrights or legal ownership. As of early July, no action had been taken.

Markle of Colorization blames Ted Turner for some of the bad publicity. After his company, Turner Entertainment, signed a contract with Color Systems Technology to colorize 100 movies, "he went shooting off his mouth about how they were going to colorize *The Maltese Falcon*, *Casablanca*, and *Miracle on 34th Street*—all the cherished classics," Markle said. "Suddenly the public was in an uproar, and the producers in Hollywood took up their cause." In view of the similar reaction to Colorization's treatment of *It's a Wonderful Life*, Markle concluded: "If we all stayed away from coloring the classics, the resistance would diminish." He figures that the classics total roughly 100. Given his estimate of 20 000 colorizable movies, "eliminating 100 still leaves a lot of business." —*M.A.F.*

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sales. Turnaround time, which is now about one month for a 100-minute feature, is being shortened as each company adds colorizing workstations and colorists, along with faster hardware and software.

Making black eyes blue

Converting a black-and-white film is not as simple as coloring shapes on a video screen. Though their colorizing techniques differ, all of the companies follow a similar sequence of overall steps, of which adding color is only one.

The colorizing company first meets with its client to select the colors to depict key objects in the film. A research staff then digs for records of the actual colors of costumes and sets at the time the film was produced. Some of the best sources are color photographs taken during the shooting, as well as the old movie placards that were posted outside theaters to draw in crowds, which were usually in color even though the movies were black-and-white.

Some of the actual colors in black-and-white movies are known; Ol' Blue Eyes (Frank Sinatra) has, well, blue eyes. Other traits are questions for researchers; it was not readily known that Stan Laurel, of the comedy team Laurel and Hardy, for example, had bright red hair. Colors that cannot be uncovered in research are chosen by art directors at the colorizing company.

While research is under way, the best available print of the original black-and-white film is duplicated onto a master black-and-white videotape. All processing is done on the videotape, leaving the original film untouched. The master is cleaned to remove defacing marks, and scratches are filled using conventional video processing techniques such as frame averaging and filtering.



Images by Polaroid Corp

Adding color to the faces of such stars as Humphrey Bogart in The Maltese Falcon *has heightened the debate about colorizing movies. The color version was completed in 1987 by Color Systems and broadcast by Turner Entertainment.*

The research staff and art director then break a film down into scenes for cataloging. Each scene, which may last from 2 seconds to 2 minutes, consists of a number of frames in which the basic visual elements remain the same. There may be 400 to 1400 scenes in a 100-minute movie, each characterized by uniformity of camera angle, lighting, background, characters, and costumes. For each scene the catalog lists the colors of the costumes, the props, and the set, as determined by research. The art director then determines the "key frames" for each scene, which will serve as color references. Key frames include the first frame of a scene, and usually several succeeding frames that require a change or introduction of color, because a new object appears, for example, or because a change in lighting casts a different tone on all colors.

Using the compiled research, the art director and the leading colorists fill the key frames with colors generated by computer. This may take from 20 minutes to 4 hours a frame. Every aspect must be specified: hue, saturation, direction of light source, reflections, and shadows.

When the key frames of a scene have been colored, and the reference color values have been stored in computer memory, the remaining frames of the scene are processed on the equivalent of a production line. The production-line colorists, called trackers at Colorization Inc. and rangers at Tintoretto, set in motion a computerized process that automatically transfers colors from the first key frame to subsequent frames, until the next key frame is encountered.

Although the transfer is automatic, the trackers must check each frame to make sure that color coincides with the position of moving objects from frame to frame. On average, only about 4 percent of the picture elements, or pixels, change due to movement from frame to frame, but for frames in which the action occurs quickly, the color transferred by computer may be misaligned. In such cases, the trackers recolor portions of the frame.

The colorists also check frames for small objects that are introduced suddenly, as when a switchblade snaps open (sometimes called the "rabbit out of the hat" effect). The new object must be colored by a technician because it does not appear in the preceding key frame.

When a scene has been completely tracked, it is sent to the most up-to-date version of a cutting room. Because each frame of the movie has been coded with respect to time, a colorized scene can be laid down in the proper position on a blank space of what will become the master color videotape, even though the scene has been processed out of sequence.

Colorists and their computers are up against daunting numbers. Standard television images are broadcast—and hence videotape is recorded—at 30 frames per second in North America and Japan. At this rate, a 100-minute movie contains 180 000 frames to be colorized. Including the time-consuming step of coloring key frames individually, it takes about 4 hours to colorize 1 minute of a movie. Experience at Colorization indicates that the full colorization process, from research to client approval, takes about one month.

Colorization Inc.: luminary of luminance

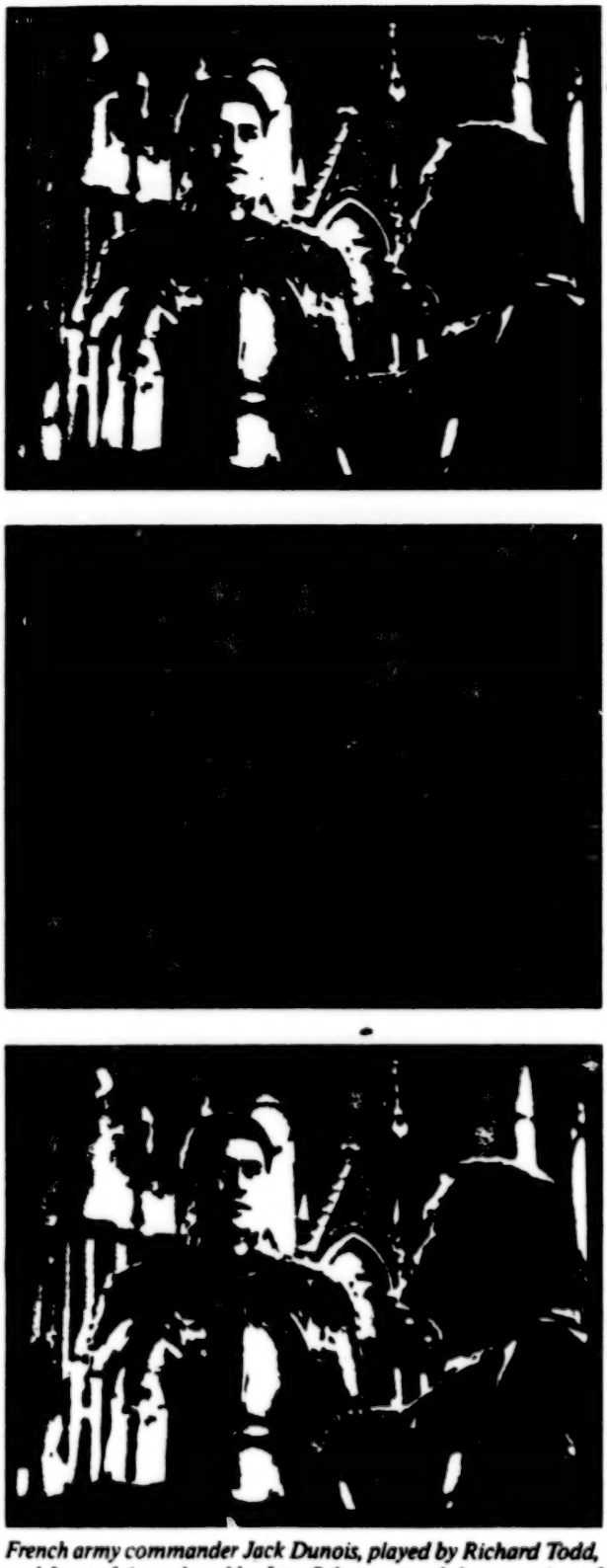
Although each of the colorizing companies follows the same general sequence of steps, they use very different techniques for coloring the frames in a scene.

At Colorization the art director calls up black-and-white frames on an editing workstation and uses a computer mouse to outline as closely as possible each shape in the frame that is to be colored [see "Radiating color," p. 53]. Once the outlines are drawn, each shape is filled in by computer with a uniform color. A second screen displays the colored shapes alone, in the correct position.

The color is generated by a custom machine built for Colorization and named after its architect, Harvey Dubner, president of Dubner Computer Systems in Paramus, N.J. The editing workstation is based on a standard film industry CMX video editing system, which communicates with the Dubner over Ethernet communications lines. The CMX is controlled by a standard time code specified by the Society of Motion Picture and Television Engineers, of Scarsdale, N.Y.

The problem presented to the editing systems at all four colorizing companies is how to generate the standard components of a broadcast-quality color television signal from a black-and-white videotape and computer graphics. A television signal, as

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Brian Holmes

French army commander Jack Dunois, played by Richard Todd, and Joan of Arc, played by Jean Seberg, attend the crowning of Charles VII in Rheims Cathedral, in Otto Preminger's 1957 production of George Bernard Shaw's Saint Joan. *The original black-and-white frame is seen on a television monitor [top] at Colorization Inc. The hues chosen by an art director, in their proper position in the frame [center], are also displayed on a monitor of the workstation. The final colorized frame [bottom] combines the computer-generated graphics and the original black-and-white luminance.*

standardized in North America and Japan by the National Television System Committee (NTSC), is in fact made up of four signals: a chrominance signal, which carries both hue and saturation information; a luminance signal; and vertical- and horizontal-blanking interval signals. When received by a television set, the chrominance signal generates the red, green, and blue that together make up a color image. The luminance controls the brightness and intensity, and the synchronizing signals in the blanking intervals control the TV set's electron beams.

When generating the final colorized frame, Colorization uses the luminance information from the original black-and-white to modulate the computer color. Once the color for a frame has been set, the CMX synchronizes the Dubner and the black-and-white video generator. The Dubner generates the chrominance signal, and the black-and-white video generates the luminance, vertical-blanking signal, and horizontal-blanking signal. The output for each scene is recorded on a 10-megabyte hard disk.

The Dubner, CMX, disk drives, and video monitors are accessed and controlled by the art director using IBM PC XTs which run custom software. Though the process of combining the signals is technologically complex, most of the time is spent accessing frames and color data. "We do a lot of lookups and input/output, and really only a little computing," Colorization president Wilson Markle commented.

The process repeats for each frame, and all the key frames for a scene are stored on the same disk, which then goes to Colorization's production line. There trackers move from key frame to subsequent frames, checking the automatic color mapping and correcting it if necessary. The tracking information, including color and luminance information, is passed through a video encoder, which puts out a composite, NTSC-standard signal of 3.58 megahertz for color television. At the same time, the signal for the scene is laid down in proper time sequence on the master color videotape. A feature film may require as many as 6 gigabytes of storage.

Tintoretto's overall procedure is similar to that at Colorization; it too combines computer-generated color with the original black-and-white luminance. However, instead of divvying up the scenes among colorists, each character in the film is assigned to a specific technician, who colorizes all the frames in which that character is dominant. Peter DaPrato, president of Tintoretto, maintains this approach leads to better color consistency throughout a movie.

Tintoretto's color-generating computer is custom built, and workstations are controlled by IBM PCs. Information is stored on laser disk, however. This enables engineers to digitize the black-and-white luminance, add the color data, and rerecord a combined image onto a blank videotape, resulting in a master tape that is of the same generation as the black-and-white.

Color Systems: Who is that masked man?

Rather than having an art director color the key frames for an entire movie, Color Systems distributes scenes to a small group of strategy colorists who specify the hues in the key frames. Animation colorists then track color from frame to frame.

In the strategy phase, colorists first impose the dominant background color—blue for the sky, for instance—over the entire frame. In areas where other colors are dictated, the background hue is knocked out. The shapes that will receive other colors are outlined roughly, using a mouse. The resulting polygonal "masks" are displayed for reference on a black-and-white screen at the workstation [see "Modulating masks," p. 53].

The color chosen to fill each mask is superimposed on the corresponding portion of the original black-and-white frame, shown on another screen, so the strategy colorist can envision what the final image will look like. When the colorist is satisfied, the data are stored, and the final colorized shape is displayed on a third screen; as all the shapes are filled in, the frame on the third screen is transformed piece by piece into a completely colored image.

At Color Systems, colors are not chosen from a palette. On

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Radiating color

At Colorization Inc.'s workstation, shapes are outlined on the black-and-white image by using a computer mouse. The outlines appear on a large monitor [left], and colors are filled in. The combined output of the black-and-white luminance signal and the data from a color-generating computer is displayed on the central monitors. A vector scope [right] displays hue and saturation curves of the image. Colors are chosen from a numbered palette [far right screen].



Mark A. Fischetti

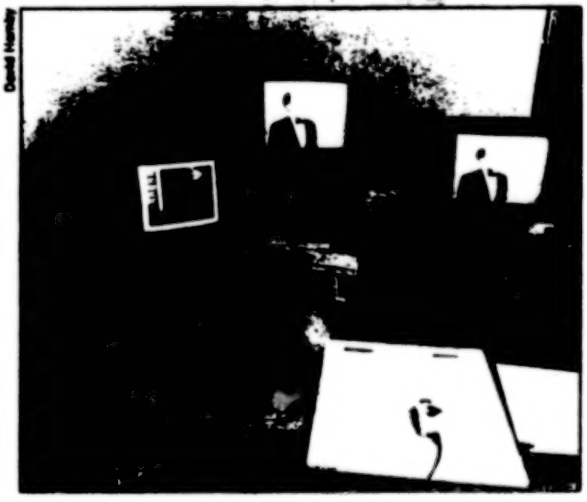
Modulating masks



Color Systems Technology Inc.

At Color Systems, a colorist outlines on a black-and-white monitor the rough "masks" for shapes that are to be colored [lower left]. To choose the color of a mask—the one over Errol Flynn's face, for example—the colorist manipulates vectors on a polar graph [far right], which define hue and saturation. The color is flashed over the corresponding area on the center screen for evaluation. The cumulative final image is displayed next to the black-and-white. A vector scope [on table, left] displays hue and saturation curves. Flynn wields his sword here in Sea Hawk, a 1940 film.

Digitizing pixels



David Hurwitz

American Film digitizes each pixel of a frame; a computer selects up to 256 levels of gray in the original black-and-white frame and assigns values to them. For any area on the image, a colorist chooses a hue from the color wheel. That color is imposed on all pixels in the area with the same gray scale. When enough have been colored, the computer can average pixels and color the intermediate ones. A vector scope [center] displays red, green, and blue curves for reference. The central monitor shows the final image of Frank Sinatra in a 1962 Judy Garland television show.

a computer screen, colorists manipulate vectors on a polar diagram where angle and radius of the vectors represent hue and saturation. The position and the length of vectors specify the way the computer generates color.

For each mask area, the color-generating computer picks up the original black-and-white luminance values and uses them to modulate the color imparted to the mask. There is no need for an exact outline of each shape; the edges are defined by the color-generating computer, which diffuses the color when it senses a sharp change in the original gray scale at a boundary. Where masks overlap, color overlaps, creating a transition color. Because exact outlines need not be indicated, this procedure takes less time than the procedure for key frames at Colorization.

Colorists at Color Systems use Apple Macintosh computers to control the system. The color-generating computer is based on Intel Corp. 80186 hardware. Color Systems is currently upgrading its equipment, replacing the Macintoshes with Silicon Graphics workstations and the Intel hardware with a Microvax 2 system. Communications for the present system are conducted over RS-232 lines; the new system will communicate over Ethernet lines.

Once a key frame has been colored, it and other key frames for an entire scene are stored on an 80-megabyte hard disk. Using the information on this disk, an animation colorist processes the frames in between. In contrast to the procedure at Colorization, however, the transfer of color from frame to frame is not automatic at Color Systems. After advancing a few frames, the animator must reposition and reshape the masks that change their shape because an object or a character moves, or appears or disappears. The computer then interpolates the masks between the outlined frames. Once a scene is completely colorized, it is sent to an editing center, where it is laid down on a master videotape.

American Film: pixel pro

Unlike the analog procedure at Colorization and Color Systems, the approach at American Film Technologies is entirely digital.

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Each pixel is digitized, colored, and manipulated. Summing up the differences in technology, Joseph Mintz, president of American Film, said, "It's two different worlds."

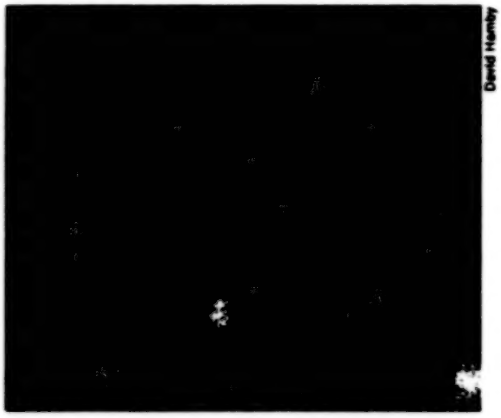
American Film first copies a black-and-white film onto videotape. The video signal is sent to a computer that picks up the luminance value for each pixel in each frame, advancing frame by frame through the entire movie. It picks out as many as 256 values of gray in a black-and-white NTSC television frame, and pixels with the same gray value are assigned identical digital data values. Holes, scratches, and blemishes on the film are filled or removed by averaging the values of pixels around them, much as anomalies are corrected in digital audio recordings.

The movie is then divided into scenes, and the key frames chosen are colorized by an art director. The art director divides a key frame into areas by shape or contrast, and selects a color for each area from a color wheel, a circle on a screen that displays the entire spectrum from red to violet ["Digitizing pixels," p. 53]. This color is then assigned by computer to each pixel in that area that has the same gray scale value. The colored pixels replace black-and-white ones in the system displaying the black-and-white frame, so the art director can see how the color looks. More colors are chosen to replace gray pixels until the frame is complete.

The American Film procedure is very time-consuming. Not every pixel in a frame need be colored, though; at some point the computer can average the data for the colored pixels and use the averages to fill in the intermediate pixels automatically. The real speedup, however, occurs once a key frame is completely colored; the computer then assigns colors to all pixels in subsequent frames automatically until another key frame is encountered. Tracking is done only to check for rabbit-out-of-the-hat effects and other aberrations.

American Film controls its custom workstations with IBM PC ATs. Communications are done over RS-232 lines. Information from the colorizing workstations is stored on 20-megabyte Bernoulli cartridges; each workstation has two drives, for a total of 40-megabytes. The amount of data stored is substantial because each pixel of each frame is digitized; only 2 seconds of a colorized movie can be stored on 40 megabytes of cartridge.

The contents of each Bernoulli are archived in the proper order on laser disk. Once the entire movie has been archived, a master videotape is produced from the disk in one pass.



Engineers at American Film are adapting colorizing techniques for medical diagnostics. They are developing a package that would enhance the way computerized axial tomography (CAT scan) image data is depicted. With this system, a sequence of segments of a brain in black-and-white can be colorized [above]. By adding color, much finer variations in tissue density emerge, enabling doctors to spot tumors at an earlier stage, for example. The ability to rotate the image and change the color distribution, it is hoped, will help doctors to better determine a tumor's shape, size, and density, and allow surgeons to plot, in color, the least destructive path of incisions to extract the tumor.

Turning technology into a business

Each of the colorizing processes works well, but a good process does not make a profitable business. The companies are concentrating on securing contracts with film studios, reducing turnaround time, and improving quality.

Colorization Inc., formed in 1981, is the oldest of the colorizing companies. Its first release—a 30-minute Laurel and Hardy short called *The Music Box*—aired on television in 1983. In 1985 it released *Topper*, the first colorized full-length movie. The company has since released more than 15 movies, including *It's a Wonderful Life* and several segments for television specials. Its latest release, *Something to Sing About*, was completed in May. All the films are owned by Hal Roach Studios, in Los Angeles. Colorization Inc. is contracted full-time to Hal Roach for two years, and will color many of the 100 movies in its library. In a move to bolster sales, Hal Roach in May licensed Video Treasures of Hackensack, N.J., to distribute videotapes of all its colorized movies at a suggested retail price of $9.98, much lower than the $29.95 or $39.95 that has been common.

Profits have been long in coming, because of the long lead time for completing a custom colorizing system and the lag before releasing movies. This year is the first that Colorization, for example, expects to make a profit.

However, there is plenty of work to go around. Of the 40 000 black-and-white films made, 20 000 still exist. Even if four companies each colorized one a week, the total would be only 200 a year. "Revenues are just sitting there waiting to be made," said John Hardy, senior vice president of Color Systems.

Color Systems, formed in 1983, has released more than 15 features, including *Dark Victory* and *The Absent Minded Professor*. Although its cumulative net loss totals more than $7.5 million, the company holds $24 million in contracts, including a commitment to 20th Century-Fox for colorizing 16 Shirley Temple films, and an agreement with Turner Entertainment to colorize 100 movies from the libraries of M-G-M, Warner Brothers, and RKO. The libraries, which Ted Turner obtained when he bought M-G-M last year, include *Father of the Bride* and *42nd Street*.

Color Systems' revenues also include royalties from broadcasting, an arrangement that is becoming more common. Color Systems receives 10 percent of Turner Entertainment's proceeds from broadcasting *Yankee Doodle Dandy* as part of the fee for colorizing the movie. Turner made more than $1 million last year from broadcasting and syndicating the colorized version.

Tintoretto, which has a full-time staff of 25 and up to 40 free-lance colorists, recently contracted with film studio JRB of Paris to colorize 10 feature films, though Tintoretto president DaPrato would not release their names. JRB plans to market the movies to cable networks in the United States, he said. American Film, the newest colorizer, introduced its process at a March 31 press conference. It has converted numerous demonstration scenes from such films as *Sea Hunt* and *The Bells of St. Mary's*.

All four companies have plans to speed up their colorizing operations. From Colorization's current rate of about one feature per month, Markle predicted an increase to one movie per week by 1988. His staff will increase from 200 to 400, half of whom will be trackers. Hardy of Color Systems predicted colorizing two to three movies a month by August, with 200 employees, half of them colorists; he expects to double the pace next year. American Film plans to add 15 workstations and dozens of colorists in San Diego, Calif., and Los Angeles by the end of this year. Based upon its current colorizing pace, it would then produce a movie every 20 days. All the companies plan to be operating three shifts a day, seven days a week by yearend.

Pink is not red

Realizing that their success depends to a large extent on how realistic the added color appears to audiences, the companies are also trying to improve their processes.

The concept of coloring black-and-white film originated with Thomas Edison, who established an assembly line for hand-painting black-and-white film. Around the time of World War I, two lengths of film—one for red colors and one for blue-

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Sweatshop of the 1980s

Debbie sits at work in a small, dimly lit room, with the rock group Bon Jovi's latest hit blaring down from stereo speakers in the ceiling 12 feet above. Just left of her elbow is an opaque wall of narrow glass doors; small red lights on racks of computers glow from behind. In front of her, three large monitors display versions of a single frozen frame from the movie *Sea Hawk*—one in black-and-white, one showing patches of color, and the third showing the combined image. Debbie leans forward and presses a button on the computer mouse she has been manipulating. The resulting click means the colored frame is stored in computer memory.

Eight hours later, Debbie emerges from the little room, squinting at the fluorescent brightness of the hallway as she passes a fresh worker coming to take the next shift. They arrive at Color Systems Technology in Marina Del Rey, Calif., by the dozens, each filling into a soundproof room—three shifts a day, seven days a week, as they do at the other colorizing companies.

Such is the life of a production-line colorist. Granted, it is not quite the life of a truck assembly line worker; the colorists control their own work pace, take breaks when they want, sit on custom-made chairs, and choose the music they listen to. They are for the most part educated young men and women with a flair for graphic arts and the knack of using computers, although there is no requirement at any of the colorizing companies for such formal training; a good attitude, the company presidents note, is the critical attribute. (At Color Systems, though, applicants do have to pass a color-blindness test.)

The colorists are well paid, and are routinely consulted on graphics and technical questions. Nonetheless, a colorist is required to produce a minimum volume—from 1000 to 2000 frames a shift, with the help of video processors.

While the ergonomics differ at the companies—some colorists work in individual rooms, some at rows of workstations, and others in semiprivate cubicles—several common conditions seem to foster productivity and creativity: dim lighting, up-tempo (usually loud) music, and visual isolation by means of plain, dark partitions. "It takes getting used to," several colorists commented.

Most said, however, that they do not experience eyestrain, low or back pain, or chronic fatigue—common complaints of VDT operators and assembly line workers. They attribute their relative health to the absence of pressure to compete with each other, and to their own control of the pace of work. While they feel pressure to produce, they indicated that the self-expression in a colorist's work makes for a self-imposed pace that is productive. —*M.A.F.*

greens—were bonded together to produce a composite, colored film. In the 1920s, producers tinted and dyed black-and-white film. With the advent of sound films in the early 1930s, coloring experiments stopped, because the color information on a film interfered with the soundtrack information. The first film actually shot in color was *Becky Sharp*, produced in 1935; it was made possible by the new Technicolor filming process.

All the early techniques for adding color permanently altered the original black-and-white film. It was not until the late 1970s that methods were developed to add color information to a black-and-white signal on videotape.

Colorization's Markle and Color Systems' Hardy have both conceded that the quality of their first films was not great. Quality has improved as each company has learned by trial and error how to better use its hardware and software. The companies say the quality of their films is now consistent from one to the next. The goal, they agree, is a film in which the colorization is not apparent to the viewer.

Unfortunately for those who seek absolute criteria, there is no quantitative way to measure quality. It is a matter of taste, which is more than enough grounds for those who like to argue.

Perhaps objective evaluations of quality come from movie critics with an eye trained for cinematographic detail. *Video Review* magazine, which bills itself as "the world authority on home video," recently rated some films from both Colorization and Color Systems as being very good, and others from both as bad.

Gary Franklin, a movie critic for Channel 7 in Los Angeles, whose reviews Hollywood insiders say can make or break a new release, has rated American Film's quality above that of the other companies. American Film has colorized only segments of film, however, so no judgment can yet be made about the quality of a full-length movie.

One common criticism of colorized movies is that the color sometimes appears to float in front of the image. At Colorization, attempts are being made to modulate the color signal directly, rather than using the black-and-white modulation data.

American Film is perfecting reflections and highlights. Because highlights are a function of luminance, the problem at all the companies has been that the reflections on the face of a person looking at a fire, say, would flicker in white. A new technique will process the color and luminance information for each pixel, producing a colored reflection on the person's face, or a golden shimmer on a lake at sunset, rather than a white reflection.

Red arteries and yellow brains

While converting movies is the bread and butter of the colorizing companies, they are adapting their techniques for other uses. Cranking out animation logos and animated graphics for TV commercials is a relative snap. Computer artists at Colorization, for example, have created numerous logos and three-dimensional graphics for television spots for companies such as the Coca Cola Co., Northern Telecom, and the O'Keefe Brewing Co.

American Film is the only company that can colorize cartoons. No artist can follow the hard cartoon edges exactly with a mouse. Even if an artist could, no analog coloring system has registration absolute enough to meet hard edges but not overlap them. American Film, however, can digitally record the pixels that form black lines, then color the adjacent pixels.

American Film can also practice such sophisticated techniques as reconstructing three-dimensional images from a series of two-dimensional raster scans. Executive vice president Barry Sandrew, who left Harvard Medical School to colorize movies, and computer graphics engineer Frank Herbert are using this and other techniques to improve such medical diagnostics as computerized axial tomography [see photo, p. 54]. They are applying similar techniques to improve images from digital subtraction angiography, used among other things to detect aneurisms (weak spots due to disease) in major arteries leading from the heart.

To probe further

For a review of broadcasting standards; high-definition, cable, and direct-broadcast television; and television technology, see "The new television: looking behind the tube," a two-part series in the August and September 1984 issues of *Spectrum*.

There is little published material on colorization. The journal of the Society of Motion Picture and Television Engineers, Scarsdale, N.Y., covers the topic as a technology; one of the landmark articles is "The Development and Application of Colorization," Wilson Markle, *SMPTE Journal*, July 1984.

Video Review magazine regularly rates the quality of colorized movies. The entertainment industry's daily newspaper, *Variety*, covers the business angles of the colorizing companies as well as protests of the practice. Both can be found on newsstands. ◆

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AMERICAN FILM REPAIR INSTITUTE

MARVIN A. BERNARD
President and Chief Executive Officer

Comment Letter
RM 88-9
No. 19

October 26, 1988

OFFICE OF REGISTER
OF COPYRIGHT
NOV 8 - 1988
RECEIVED

Mr. Eric Schwartz, Attorney-Advisor
to Register of Copyright
Copyright Office
First & Independence Avenue
Room LM 403
Washington, DC 20559

Dear Mr. Schwartz:

I very much appreciate your getting back to me on motion picture film rejuvenation, protection and preservation. Having spend the last 40 years in this field and restoring 2 million feet of film per month, I believe I have sufficient information to help you as you progress with your report.

As we discussed, I did appear with George Stevens at a Senate investigation hearing in 1979, along with Lillian Gish and several others who were conducting an investigation into the National Archives explosion in Suitland, MD (see enclosed). Prior to that, at the request of Congressman Richard Ottinger, the GAO did their own study on Government archival film and Government film libraries in general. While that report was by no means completed, it should open your eyes in terms of the magnitude of the loss of film throughout the Government film collections (see enclosed).

When I spoke with Mr. Petry when I was attending the Colorizing hearings, it was to alert him to an issue that goes beyond colorization of film --- one needs to have the film in good condition in order to colorize it. Based on seven years of personal visits to various Government film facilities, I can tell you there will be millions of feet of film that will never have an opportunity to be colorized because they do not exist and have been lost forever. The poor storage, inadequate maintenance and inspection efforts, quality of raw film stock have all contributed to the demise of this film. In 1992, when film will celebrate its 100th birthday, I dare say we might be able to find 40 or 50 years of film out there. Beyond that, there will be a few thousand feet here and there.

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As I write to you now, and as we spoke earlier today, films are continually rotting away because of no budget, lack of manpower, or other inexcusable reasons. Having spent almost a lifetime as a motion picture film preservationist, I am appalled at the status of the history of Americana captured on film during this century. The twentieth century is the first century to have a visual moving image recording our history. You do not have to guess or visualize the history through the printed page. It is here in black and white and color.

When I first heard about the assignment you had by the Judiciary for colorization of motion picture film, I was diasppointed that it did not go deeper into preservation. Now that you tell me that you want to go into preservation and it is becoming an important part of your report, then I have renewed faith that you will succeed. For the first time, the United States will have a Government-documented report on film preservation and its needs. I should like very much to personally commend you for the undertaking in which you are involved. No one has been there before you, and you will definitely make an imprint on the history of Americana.

Please do not hesitate to call me if you have any questions after you look through the enclosed material. I would be pleased to have you pick my brains or go into my files dating back seven to 10 years.

Cordially,

Marvin A. Bernard

MAB:jo
enclosures

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Valuable Government-Owned Motion Picture Films Are Rapidly Deteriorating

Many valuable and historical Government-owned motion picture films are not being properly cared for and are deteriorating in various Federal agencies. Immediate action is necessary or film documenting the Nation's history will never be seen by present or future generations.

The Office of Management and Budget, General Services Administration, Department of Defense, and United States Information Agency must act to improve the storage, inspection, maintenance, and preservation of films.

The Administrator of General Services should expedite removal of non-historical films from the National Archives and improve the guidance to determine the retention periods and value of historical films.

LCD-78-113

JUNE 19, 1978

NATIONAL ARCHIVES AND RECORDS SERVICE FILM-VAULT FIRE AT SUITLAND, MD.

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

JUNE 19 AND 21, 1979

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The New York Times

NEW YORK, SUNDAY, MAY 15, 1988

Rare Film Said to Be Imperiled

By RALPH GINZBURG

MOONACHIE

WHEN the American Film Festival is held in Manhattan May 23-28, a film conservator from this Bergen County borough will be there, as he says, "yelling," "waving red flags" and "putting up signs."

He is Marvin A. Bernard, and his complaint is that America does little to preserve its irreplaceable archival motion picture films: entertainment classics, newsreels and, especially, combat footage and other historic documentaries held by the Federal Government.

According to Mr. Bernard, such films are receiving neither proper storage nor the periodic "rejuvenation" — an industry term — that all warehoused films require.

"We live in the first century that has left a living, graphic, unambiguous record of its triumphs and catastrophes," he said. "Yet, through neglect and bureaucratic bungling, we are allowing it to turn to dust in storage cans.

"Throughout the nation, films of historic significance fail to receive requisite periodic inspection, ventilation and chemical refurbishing.

"Motion-picture films, especially the pre-1952 nitrate-based sort, are a highly volatile, perishable substance that require conscientious, expert, ongoing attention. But the job simply isn't getting done. Future generations of Americans will be impoverished for our scandalous neglect."

The American National Standards Institute concurs. It stipulates that laid-away film must be protected against heat, humidity, fire and mold and that periodic ventilation, stretching, tear-mending and chemical cleansing and preservation are mandatory.

The United States General Accounting Office, in a report to Congress entitled "Valuable Government-Owned Motion Picture Films Are Rapidly Deteriorating," also backs Mr. Bernard, who said:

"I feel like an engineer who discovered that a bridge is about to collapse. I keep crying out, but nobody listens."

American archival footage is held by film studios, the Government and others. Studios have made "at least a ha" hearted attempt" ' 'ct old films, Mr. Bernard sai Government's performance as "abominable."

Some 100 Federal agencies possess about a billion feet of archivally significant film, enough to circle the globe 400 times. It is kept at 384 facilities, with the most valuable, according to the Comptroller General of the United States, held by the Department of Defense, NASA, the National Science Foundation, the Library of Congress and the National Archives.

As an example of what he terms "Government ineptitude," Mr. Bernard cited the collection of World War II Marine Corps combat-film footage.

"Universal Pictures was preparing to make 'The MacArthur Story' in

'We are allowing it to turn to dust in storage cans.'

1976," he said. "The studio wanted to cut into the film — actual World War II combat footage. When they asked the Marines to provide it, Universal discovered that all 14,000 reels of it, sequestered in a dank ex-brig at the Marine Corps base in Quantico, Va., was in a state of horrendous deterioration.

"The film was infested with mold and fungus, bent and curled through improper stacking and covered with big brown blotches due to exposure to high humidity. The very worst of it had already melted into an irretrievable syrup-like goo.

"Thanks to an outcry from Universal, the film was rushed to my lab here in Moonachie and we were able to salvage 90 percent of it."

Mr. Bernard's concern is Filmlife Inc., 141 Moonachie Road.

"Remember," he said, "these were not films of mere pomp, parades and pageantry. These were the recorded valor of America's noblest heroes, many depicted during the last moments of their lives and some even depicted at the very moment of sacrificing their lives for their country. A couple dozen cameramen also were killed in the act of trying to preserve these moments for the American people.

"Anyhow, bureaucratic nincompoopery had allowed the films to all but expire because of indifference and improper maintenance."

The Marine footage has since been transferred to a Defense Department film repository at Norton Air Force Base in San Bernardino, Calif.

"It would have been hard for the Government to find a worse location," Mr. Bernard said. "It's right out in the middle of the desert, but the site selection typifies Government decisions vis-a-vis motion picture film.

"More-appropriate sites are available at abandoned Government air-raid shelters dug deep into mountains, and even storage at unused Government buildings at the South Pole would have been preferable.

"I've been out to Norton. They store over 180 million feet of film there. Their paper records are magnificent and their waxed floors are positively blinding, but maintenance of the film itself is a disaster. The film is never aired, inspected, cleaned or chemically preserved."

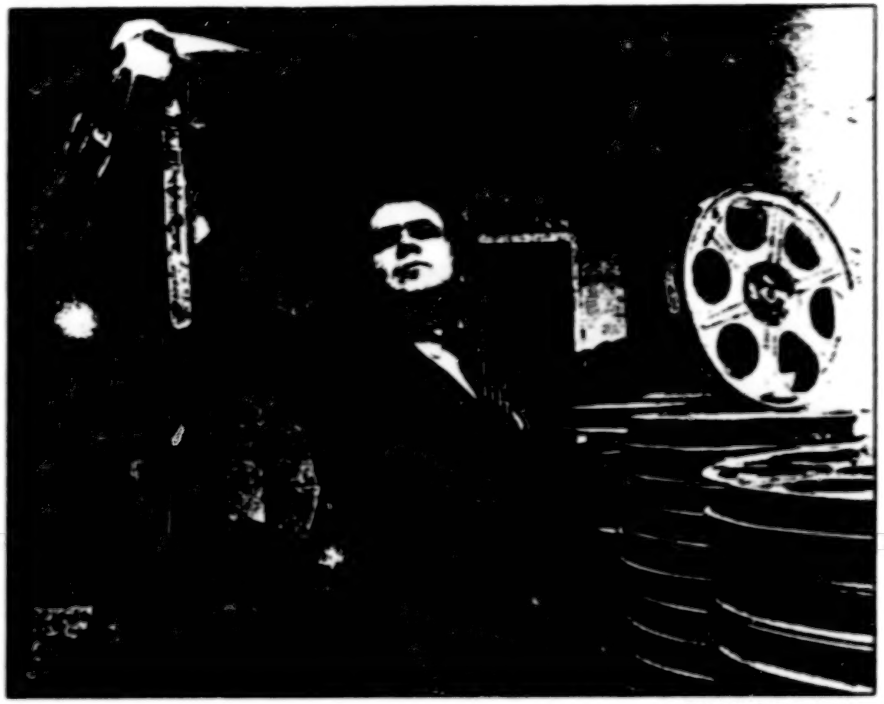
At the Library of Congress and the National Archives, things are only somewhat better, Mr. Bernard said.

"Some of their people are conscientious, but they lack funding and training," he said. "Archives has a policy of merely copying endangered film, not rejuvenating it first.

"Thus, they make for posterity copies of films that are grime-encrusted, scratch-scarred and obscured by what we call 'snow' — white spots that flutter across the image when it is projected. Often, the masters are then trashed, making it impossible to obtain a clear historical record forever.

"Furthermore, Archives has a horrendous film-maintenance backlog. For every 10 films they should process, they treat one."

Films at the National Archives include the Zapruder footage of President John F. Kennedy's assassination, Army Signal Corps footage on the liberation of World War II concentration camps, coverage of the Tokyo and Nuremberg war-crime trials, a million feet of Army Expeditionary Force participation in World War I, home movies of Eva Braun taken by Hitler's personal photographer and the signing of treaties ending both World Wars.



The New York Times/Ralph Ginzburg

Marvin A. Bernard examining film at his laboratory in Moonachie.

Because of what Government investigators termed National Archives incompetence, two explosions and fires erupted at a film depository in Suitland, Md., in 1977 and 1978, destroying 800,000 feet of March of Time newsreel masters and 12½ million feet of Universal newsreel masters spanning a decade.

Lax archivists were dismissed.

According to a subsequent Congressional inquiry, Mr. Bernard had visited the depository six months before the explosions and warned of their imminence.

In a telephone interview, William Murphy, head of the Archives' Motion Picture, Sound and Video Branch, called Mr. Bernard "just another disgruntled vendor who lost out in bidding for our business."

"We won't use his services as a matter of ," Mr. Murphy said. "We w rue our historic footage to his chemical baths, the ingredients of which he keeps secret."

To this, Mr. Bernard replied:

"My cleaning compounds have satisfied the nation's most exacting film archivists — those at Hollywood studios — for over 40 years. What is Mr. Murphy worrying about?

"As to his insinuation that my interest in preserving America's historic documentary footage is purely commercial, that's bunk. I don't care who rejuvenates it, just so long as the job gets done.

"Naturally, I think we have the best credentials. I would even be glad to process this footage at cost, at no profit to myself whatsoever."

Industry and public figures involved in historic-film preservation tend to support Mr. Bernard.

Former Representative Richard L. Ottinger of New York, who headed the investigation into the National Archives fires, recently praised Mr. Bernard and reiterated his belief that "a good deal of our history is in jeopardy."

Jack Rush, chief of Universal Pictures's film library at Universal City, Calif., said:

"There is no more knowledgeable and dedicated film conservator than Marvin Bernard. Through his efforts, the American people today enjoy, and will continue to enjoy into the indefinite future, such classics as 'Gone With the Wind,' 'The Maltese Falcon,' 'Ben Hur,' lost episodes of 'The Honeymooners,' Laurel and Hardy comedies, Ronald Reagan re-releases and Disney classics."

"Marvin Bernard's restoration skills are legendary throughout the film industry, and the U.S. Government should seize the opportunity to avail itself of them."

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NATIONAL CENTER FOR FILM AND VIDEO PRESERVATION

Comment Letter
RM 88-3
No. 20

January 9, 1989

Mr. Eric Schwartz
Policy Planning Adviser
to the Register of Copyright
Copyright Office
Library of Congress
Washington, D.C. 20559

Dear Eric:

As promised, enclosed is a copy of the Report and Results of the National Film and Video Storage Survey. This survey was conducted by the National Center in 1986 and published the following year. The introduction on page 127 gives background on the survey, and the "Conclusions and Recommendations" section on page 134 summarizes the results.

The survey was conducted primarily to address storage concerns nationwide. Thus, it does not address the full range of preservation issues that we discussed and that you are researching for your report to the House Judiciary Committee.

However, I think you will agree that the accompanying "Film Holdings" and "Video Holdings" charts give information that is especially valuable in providing an overall statistical picture of the field. As the text of the report notes, the institutions responding to this survey hold an estimated 90 percent of the film and tape materials in the public archives. (I have also enclosed xerox copies of our own print-out of these two charts. They are much easier to read than the versions published in Film History.)

It was good talking with you again about your efforts on the congressional report and the issue of television selection and deposit. Both these initiatives are very timely and could have a much-needed and far-reaching impact on the field of moving image preservation.

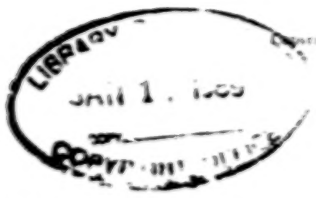
The American Film Institute

P.O. Box 27999
2021 North Western Avenue
Los Angeles, California 90027
Telephone 213-856-7600

The John F. Kennedy Center
for the Performing Arts
Washington, D.C. 20566
Telephone 202-628-4000

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National Film and Video Storage Survey Report and Results

by Stephen Gong
for the National Center for Film and Video Preservation

The Film and Video Storage Survey was conducted in 1986 by the National Center for Film and Video Preservation on behalf of the Film and Television Archives Advisory Committee (F/TAAC). The survey was designed to gather information on the size and nature of holdings in the public moving image archives of the United States, as well as the storage conditions in which they are currently maintained.

The survey was not intended to address the storage conditions of non-archival film collections nor of the film studios, television networks, and other producers. While information about these related communities will be important, it was felt that the survey could best provide an initial cornerstone of data by focusing on the public archives. Our hope is that the survey will serve as the first in a series of ongoing efforts to determine storage conditions throughout the broad field of film and video preservation.

The scope of the survey—its length and form—was discussed at the October 1985 F/TAAC meeting in Madison, Wisconsin. The first draft of the survey was developed by Stephen Gong and reviewed by the Center's staff and other F/TAAC archivists. Important input on the final survey was received from Paul Spehr, Assistant Chief of the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress; Mary Lea Bandy, Director of the Film Department of the Museum of Modern Art; and William Schaefer, Executive Vice Chancellor of the University of California at Los Angeles.

In January 1986, the survey was distributed to 51 institutions nationwide. Names were taken from the F/TAAC mailing list and from lists of other institutions reported to have film and/or video collections.

A total of 31 organizations completed the survey, a response rate of 60%. More important, the institutions who did respond hold an estimated 90% of the film and video materials currently residing in American public archives.

The Survey Report that follows provides overall summaries of holdings and facilities information, as well as statistical breakdowns on the responses to each survey question; two charts detailing the holdings of the responding institutions (one for film and one for video), and recommendations for further action.

Ultimately, the storage of moving images represents a problem that involves the lack of both adequate space and adequate funds. It is a problem that continues to confront all archival institutions, both large and small. The information obtained from this Survey will be essential in forming any comprehensive picture of the nation's overall preservation needs. It will help moving image archivists as they begin to develop future solutions to current problems.

HOLDINGS INFORMATION, QUESTIONS 1–13

Questions asked in this section were designed to provide an overview of the size and nature of film and video holdings throughout the field. (Aggregate figures as well as specific responses are provided in the attached Statistical Results report).

Among the results in the section on Holdings Information, the following points stand out:

1) Aggregate film holdings in the public archives now stand at more than one billion feet. Videotape holdings stand at more than 125,000 hours.

2) Almost one-half of the more than 200 million feet of nitrate film being held in public

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Film Holdings—*Continued*

Archive	Titles	Cans or Reels	Total Footage	Uncopied Nitrate	35mm Safety	16mm	70mm	8 + S8	9.5
3. Anthology Film Archives	3,000	12,000	120,000	200	3,800	114,000		2,000	
4. Chicago Historical Society		11,000	2,200,000	10,000		2,200,000			
5. Human Studies Film Archives/ Smithsonian	180		6,000,000	10,000		6,000,000		300	
6. Int'l. Museum of Photog./ George Eastman House	7,500	32,500	56,000,000	13,000,000	24,100,000	6,600,000	30,000	5,000	10,000
7. Library of Congress	100,000	382,536	356,188,000	35,000,000	160,000,000	96,000,000	144,000	40,000	
8. Miss. State Archives	7	4,900	2,200,000			2,200,000			
9. Museum of Broadcast Communications	13		10,000			10,000			
10. Museum of Modern Art	8,000	60,000	70,000,000	19,500,000	45,000,000	5,000,000	100,000		
11. Nat'l Archives and Records Administration	40,000	300,000	230,000,000		200,000,000	30,000,000			
12. Nat'l Center for Jewish Film	2,000	4,000	1,862,500	400,000	800,000	2,400,000		2,500	
13. Nat'l Library of Medicine/Pub. Health Serv.	1,125		1,170,000		42,800	1,130,000			
14. New York Public Library/ Dance Collection	2,600	4,550	3,500,000		25,000	3,500,000		3,750	
15. North Dakota State Archives	200		1,500,000			1,500,000			
16. Oregon Hist. Society	10,000	10,000	7,000,000	185,000	30,400	6,800,000		1,100	400
17. Pacific Film Archive	5,500	15,000	25,400,000	40,000	21,960,000	3,400,000		800	
18. Peabody Collection/Univ. of Georgia	2,101	2,300	1,700,000		1,600	1,700,000			
19. Public Broadcasting Serv	9,000	9,000	3,600,000			3,600,000			
20. Sacramento Hist. Center			4,783,000			4,783,000			

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Video Holdings—*Continued*

Archive	Programs	Hours	Cans, Cassette, or Reels	½" open reel No. of Titles	½" open reel Reels	½" Cassette No. of Titles	½" Cassette Cassette	¾" Cassette No. of Titles	¾" Cassette Cassette	1" Titles	1" Reels	2" Titles	2" Reels
9. Museum of Broadcast Communications	259	80	173			33	V-33	216	140				
10. Museum of Broadcasting	20,500	20,000	20,900			10,000	10,000	10,500	10,500				
11. Museum of Modern Art	400	300	600	5	5			400	535	50	15	10	5
12. Nat'l Archives and Records Admin.	12,000	7,000	12,000										
13. Nat'l Center for Jewish Film	500	520	520					500	500	10	10	10	10
14. Nat'l Library of Medicine	137	150	200					137	200				
15. New York Public Lib. Dance Collection	4,000	3,600	4,000	800		400		2,800					
16. North Dakota State Hist. Society	150	120	270	50	70			100	200				
17. Oregon Hist. Society	720	530	700	391	391	17	V/B-17	115	120	167	158	20	20
18. Pacific Film Archive	15	23	19			2	V V-2	13	17				
19. Peabody Collection/Univ. of Georgia	11,328	8,500	13,800	3	3	4,979	V-6,220	4,930	6,160	2	2	1,415	1,415
20. Public Brdcstg Serv.	25,000	30,000	40,000							5,000	5,000	20,000	35,000
21. San Francisco State University	4	4	4			4	4						
22. Southwest Film & Video Archive	400	600	400	20	20	80	V-88	120	160	60	60		
23. UC Video	650	325	650	200	200			450	450				
24. UCLA Film, TV & Radio Archives	7,000	5,000	9,000	100	100	1,000	V-800	4,000	6,000	100	100	2,000	2,000
25. Univ. of Kentucky	900	915	915			13	V-13	244	244			658	658
26. Univ. of Washington	563		563			55	V-55	508	508				
27. Vandervilt Univ.		12,500	13,000						9,700		3,300		
28. Wisconsin Ctr. For Film & Th. Research			1,500		250		V/B-100		700				450
	114,731	125,432	158,017	1,569	1,289	31,584	37,081	39,235	54,298	5,591	8,933	24,914	40,786

preservation or master materials on safety? (21 responses)

yes	*no*	*no answer*
11	10	5

21. If so, please briefly describe the difference, especially in the control of temperature and humidity. (11 responses)
"master materials are stored under cooler and drier conditions than reference copies" (9 responses)
"color preservation masters are stored in our cold vault, all other safety film is in a non-climate-controlled area" (2 responses)

22. Is all of your *safety* film on-site? (26 responses)

yes	*no*
16	10

23. If no, how far away are your other facilities? (10 responses)

Less than 1 mile	*1–15 miles*	*100 miles*
5	4	1

24. If you rent or lease outside space, is it maintained by personnel other than your own? (11 responses)

yes	*no*
9	2

25. How large is your storage space for *video* materials? (25 responses)

Sq. ft	*1–100*	*101–1,000*	*1,001–10,000*	*25,000*
	10	5	6	1

Shelving lin. ft.	*1–200*	*201–1,000*	*1,001–2,225*
	4	2	3

26. What temperature and relative humidity ranges are maintained for your *video* materials? (28 responses)

Temp. (°F)	*50–62*	*63–70*	*71–75*	*None*
	3	12	4	9

Rel. humidity	*25%*	*40–47%*	*48–55%*	*56–65%*	*None*
	1	2	12	3	9

27. Are all of your *video* materials on-site? (26 responses)

yes	*no*
20	6

28. If no, how far away are your other facilities? (6 responses)

6–15 miles	*100 miles*
4	2

29. If you rent or lease outside space, is it maintained by personnel other than your own? (7 responses)

yes	*no*
6	1

30. What are the annual costs for your storage facility, including space rental, utilities, building and equipment maintenance, environmental controls, etc. (23 responses)

no ans.	*unable to estimate*
9	9

$750–3,500	*15,000–180,000*
4	8

31. How many staff persons maintain your collection? (28 responses)

Full-time	*1–2*	*3–10*	*11–36*
	15	9	4

32. What percentage of your storage space is presently occupied? (29 responses)

1–25%	*26–50%*	*51–75%*	*76–100%*
1	1	7	20

Note: two respondents answered "110%," and one answered "120%."

33. Do you have plans to change (renovation, new construction, additional space acquisition) your storage facilities? (29 responses)

yes	*no*	*no answer*
19	8	2

34. Please summarize any changes planned for the next five years.
"new building will have improved climate control" (6 responses)
"new building will have more space" (5 responses)
"have plans to renovate existing building to provide improved facility" (7 responses)
"we plan to add compact shelving" (2 responses)

35. Would you best describe your storage conditions as: (29 responses)

Very good	*Adequate*	*Inadequate*
3	19	9

36. What types of cans or containers do you use? (28 responses)

Metal	27
Plastic	22
Polyethelene	4
Cardboard box	20
Fiber case	1

37. Do you store your film *reference* materials on reels or cores? (26 responses)

reels	*cores*	*both*
12	9	7

38. Do you store your film *preservation* materials on reels or cores? (28 responses)

reels	*cores*	*both*
5	19	4

39. What type of fire prevention system do you have? (29 responses)

None	11
Water (wet pipe)	12

HUMAN STUDIES FILM ARCHIVES
Smithsonian Institution
Room E307
National Museum of Natural History
Washington, DC 20560

INTERNATIONAL MUSEUM OF PHOTOGRAPHY AT GEORGE EASTMAN HOUSE
Department of Film
900 East Avenue
Rochester, NY 14607

LIBRARY OF CONGRESS
Motion Picture, Broadcasting and Recorded Sound Division
Washington, DC 20540

MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY
P.O. Box 571
Jackson, MS 39205-0571

MUSEUM OF BROADCAST COMMUNICATIONS
233 North Michigan Avenue
Suite 1911
Chicago, IL 60601

MUSEUM OF BROADCASTING
1 East 53rd Street
New York, NY 10022

MUSEUM OF MODERN ART
Department of Film
11 West 53rd Street
New York, NY 10019

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Motion Picture, Sound and Video Branch
Pennsylvania Avenue at 8th Street, N.W.
Washington, DC 20408

NATIONAL CENTER FOR JEWISH FILM
Brandeis University
Lown Building 102
Waltham, MA 02254

NATIONAL LIBRARY OF MEDICINE
National Medical Historical Film Collection
Preservation Section
8600 Rockville Pike
Bethesda, MD 20894

NEW YORK PUBLIC LIBRARY
Performing Arts Research Center
Dance Collection
111 Amsterdam Avenue
New York, NY 10023

NORTH DAKOTA STATE ARCHIVES AND HISTORICAL RESEARCH LIBRARY
State Historical Society
North Dakota Heritage Center
Bismark, ND 58505-0179

OREGON HISTORICAL SOCIETY
1230 S.W. Park Avenue
Portland, OR 97205

PACIFIC FILM ARCHIVE
University Art Museum
University of California, Berkeley
2625 Durant Avenue
Berkeley, CA 94720

PUBLIC BROADCASTING SERVICE
1320 Braddock Place
Alexandria, VA 22314

SACRAMENTO HISTORY CENTER
Museum & History Division
Department of Parks and Community Service
1930 J Street
Sacramento, CA 95814

SAN FRANCISCO STATE UNIVERSITY
J. Paul Leonard Library
1630 Holloway Avenue
San Francisco, CA 94132

SOUTHERN OREGON HISTORICAL SOCIETY
Southern Oregon Archive
P.O. Box 480
206 North Fifth Street
Jacksonville, OR 97530

SOUTHWEST FILM/VIDEO ARCHIVE
Center for Communication Arts
Southern Methodist University
P.O. Box 113—S.M.U.
Dallas, TX 75275

UC VIDEO
425 Ontario Street SE
Minneapolis, MN 55414

UNIVERSITY OF BALTIMORE LIBRARY
Special Collections
1420 Maryland Avenue
Baltimore, MD 21201

UCLA FILM AND TELEVISION ARCHIVE
College of Fine Arts
University of California, Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90024

I look forward to receiving the materials you are sending in the mail and, on my end, will begin working with my colleague and Co-Director, Michael Friend, on the summary report you requested.

Best wishes,

Gregory Lukow
Co-Director (Acting)

Encl.

cc: Michael Friend

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FILM HOLDINGS

	Archive	Titles	Cans or Reels	Total Footage	Uncopied Nitrate	35mm Safety	16mm	70mm	8+S8	9.5
1.	American Archive of the Factual Film		10,000	8,000,000		20,000	7,980,000			
2.	American Museum of Natural History	325	1,500	1,400,000		560,000	840,000			
3.	Anthology Film Archives	3,000	12,000	120,000	200	3,800	114,000		2,000	
4.	Chicago Historical Society		11,000	2,200,000	10,000		2,200,000			
5.	Human Studies Film Archives/Smithsonian	180		6,000,000	10,000		6,000,000		300	
6.	Int'l. Museum of Photog/ George Eastman House	7,500	32,500	56,000,000	13,000,000	24,100,000	6,600,000	30,000	5,000	10,000
7.	Library of Congress	100,000	382,536	356,188,000	35,000,000	160,000,000	96,000,000	144,000	40,000	
8.	Miss State Archives	7	4,900	2,200,000			2,200,000			
9.	Museum of Broadcast Communications	13		10,000			10,000			1
10.	Museum of Modern Art	8,000	60,000	70,000,000	19,500,000	45,000,000	5,000,000	100,000		
11.	Nat'l Archives and Records Administration	40,000	300,000	230,000,000		200,000,000	30,000,000			
12.	Nat'l Center for Jewish Film	2,000	4,000	1,862,500	400,000	800,000	2,400,000		2,500	
13.	Nat'l Library of Medicine/Pub.Health Serv	1,125		1,170,000		42,800	1,130,000			
14.	New York Public Library/ Dance Collection	2,600	4,550	3,500,000		25,000	3,500,000		3,750	
15.	North Dakota State Archives	200		1,500,000			1,500,000			
16.	Oregon Hist. Society	10,000	10,000	7,000,000	185,000	30,400	6,800,000		1,100	400
17.	Pacific Film Archive	5,500	15,000	25,400,000	40,000	21,960,000	3,400,000		800	
18.	Peabody Collection/ Univ. of Georgia	2,101	2,300	1,700,000		1,600	1,700,000			
19.	Public Broadcasting Serv	9,000	9,000	3,600,000			3,600,000			
20.	Sacramento Hist Center			4,783,000			4,783,000			
21.	San Francisco State Univ	697	1,000	1,800,000			1,800,000			
22.	So. Oregon Hist.Society		8,013	810,000	10,000		800,000			
23.	Southwest Film & Video Archive	2,000	3,900	8,187,100	225,000	2,700,000	4,983,100			4,000
24.	Univ. of Baltimore		3,000	6,000,000			6,000,000			
25.	UCLA Film, TV & Radio Archives	50,000	200,000	205,000,000	25,000,000	100,000,000	50,000,000			
26.	Univ. of Kentucky	7,986	11,506	5,250,850			5,250,850			
27.	Univ. of Washington	3,500	3,500	1,400,000			1,400,000			
28.	Wisconsin Ctr.for Film & Theater Research	14,000	40,000	18,958,000	4,000	7,469,000	11,485,000			
		269,734	1,130,205	1,030,039,450	93,384,200	562,712,600	267,475,950	274,000	55,450	14,400

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VIDEO HOLDINGS

	Archive	Programs	Hours	Cans, Cassette or Reels	1/2" open reel No. of Titles	1/2" open reel Reels	1/2" Cassette No. of Titles	1/2" Cassette Cassette	3/4" Cassette No. of Titles	3/4" Cassette Cassette	1" Titles	1" Reels	2" Titles	2" Reels
1.	American Archive of the Factual Film		150	150				V 150						
2.	American Museum of Natural History	180	105	235			1	V 1	180	221				
3.	Anthology Film Arch			800		225				500		50		25
4.	Chicago Hist Society			100				5		75				20
5.	Human Studies Film Archives/Smithsonian			725		25				700				
6.	Int'l Mus of Photog/ George Eastman House	25	10	20					22	19	2	4	1	2
7.	Library of Congress	30,000	35,000	37,000			15,000	19,573	14,000	16,261	200	238	800	916
8.	Miss State Archives			673				V 20		388		6		265
9.	Museum of Broadcast Communications	259	80	173			33	V 33	216	140			1	
10.	Museum of Broadcstg	20,500	20,000	20,000			10,000	10,000	10,500	10,500				
11.	Museum of Modern Art	400	300	600	5	5			400	535	50	15	10	5
12.	Nat'l Archives and Records Admin.	12,000	7,000	12,000										
13.	Nat'l Center for Jewish Film	500	520	520					500	500	10	10	10	10
14.	Nat'l Library of Medicine	137	150	200					137	200				
15.	New York Public Lib Dance Collection	4,000	3,600	4,000	800		400		2,800					
16.	North Dakota State Hist Society	150	120	270	50	70			100	200				
17.	Oregon Hist. Society	720	530	700	391	391	17	V-B 17	115	120	167	158	20	20
18.	Pacific Film Archive	15	23	19			2	V 2	13	17				
19.	Peabody Collection/ Univ of Georgia	11,328	8,500	13,800	3	3	4,979	V 6,220	4,930	6,160	2	2	1,415	1,415
20.	Public Brdcstg Serv.	25,000	30,000	40,000							5,000	5,000	20,000	35,000
21.	San Francisco State University	4	4	4			4	4						
22.	Southwest Film & Video Archive	400	600	400	20	20	80	V 88	120	160	60	60		
23.	UC Video	650	325	650	200	200			450	450				
24.	UCLA Film, TV & Radio Archives	7,000	5,000	9,000	100	100	1,000	V 800	4,000	6,000	100	100	2,000	2,000
25.	Univ. of Kentucky	900	915	915			13	V 13	244	244			658	658
26.	Univ. of Washington	563		563			55	V 55	508	508				
27.	Vanderbilt Univ.		12,500	13,000						9,700		3,300		
28.	Wisconsin Ctr. For Film & Th. Research			1,500		250		V-B 100		700				450
		114,731	125,432	158,017	1,569	1,289	31,584	37,081	39,235	54,298	5,591	8,933	24,914	40,786

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